

1786. March 10. NEIL CAMPBELL *against* JAMES CAMPBELL.

## WADSET.

A reverser may insist in a declarator of redemption, notwithstanding an order for redeeming voluntarily has been agreed on.

[*Fac. Coll. IX.* 414; *Dict.* 16,552.]

ESK GROVE. I doubt whether the case of Appin was well decided; but here the parties have consented, which removes any difficulty.

HAILES. The information for the wadsetter is copious in setting forth decisions pronounced long ago, but is silent as to those which are more recent. Nothing can be better established in practice, than that a declarator of redemption will be effectual without premonition and consignation. It is a more formal mode than the ancient premonition, and at the same time it saves trouble and expense to the parties concerned. So it was determined in the case of Appin; and, if I remember right, in a case between M'Lean of Drimmen and Cameron of Glendissery.

JUSTICE-CLERK. Had the question been to have been determined on the declarator, without the consent given for the wadsetter, I should have thought that an action would not have been sustained for redeeming at Candlemas, if only brought sixteen days before that term, but that such action would have been sufficient for redeeming at the following term, and so have prevented the nine years' irritancy.

BRAXFIELD. This is a very penal irritancy. I am of the same opinion with Lord Justice-Clerk. I have no doubt that declarator may go on without premonition or consignation. I have seen that case often determined in the Outer-house; but I know not if it came more than once into the Inner-house. If the wadsetter could qualify any loss from the want of premonition or consignation, it would be another case; as, when redemption was provided to be at London, and the offer of payment was made at Edinburgh, then the difference of exchange would be allowed. If the judge of the roup has not determined as to the allowance for the wadsetter, the Court may; and I see no ground for any allowance.

On the 10th March 1786, "The Lords found that the lands are to be held as redeemed at Whitsunday next, and found no pecuniary allowance due to the wadsetter."

*Act. Mat. Ross. Alt. D. Hume.*  
*Reporter, Alva.*