

the feu-duties, as well as the right of levying them. The majority, however, were of a different opinion. No. 46.

The question being reported to the Court on informations,

The Lords found, "That the wadset entered into in 1637, between Hugh, then Lord Lovat, and his brother, on the one part, and Alexander Chisholm of Comar, on the other part, of the lands therein mentioned, was a *propter* wadset, which is redeemable only on payment of the wadset-sum entire."

A reclaiming petition was preferred for the pursuers, which was refused without answers.

Reporter, *Lord Eskgrove.* Act. *Blair, Honyman.* Alt. *Wight.* Clerk, *Gordon.*
C. Fac. Coll. No. 111. p. 207.

1791. *January.* LORD ALVA *against* COLONEL ERSKINE.

No. 47.

The Lords found there was no necessity now as formerly, to use a formal order of redemption or premonition, but that a simple declarator was sufficient.

Fol. Dic. v. 4. p. 398. D. M. S.

1794. *February 25.*

The YOUNGER CHILDREN of NEIL MACNEIL *against* The REPRESENTATIVES of SIR ARCHIBALD CAMPBELL, and Others.

No. 48.

The proprietor of the lands of Ardmeanish, in the year 1748, disposed them in wadset to Neil Macneil, redeemable on payment of £410 Sterling.

The wadsetter afterwards granted heritable bonds of provision to his younger children over the wadset lands, in which they were infest.

The right of reversion having come by purchase into the hands of the late Sir Archibald Campbell, he, in the year 1779, used an order of redemption against John Cowan, then in the right of the wadset, who renounced it on receiving the wadset sum, and granted absolute warrandice to the reverser.

In the year 1785, the younger children of Neil Macneil, who had not been called by Sir Archibald when he used the order of redemption, brought an action of poinding of the ground. On the other hand, Sir Archibald, (who died during the dependence,) and the general disponee of John Cowan, brought a counter action of reduction-improbation, for setting aside their bonds, in which they had been long ago paid by the heir of Neil Macneil; and, in point of law, they

Pleaded: In consequence of the redemption of the wadset, the bonds, even although they had not been paid, no longer remain a burden on the lands. The spirit of our law is to facilitate the redemption of wadsets. See 1469, C. 27. and 1555, C. 37. Accordingly, the reverser is not bound to use an order of redemption against any but those in the actual right and possession of them; *Stair, B. 2. Tit. 10. § 19.*; 27th July, 1665, Hamilton, No. 14. p. 16522. And this order, when followed out by a declarator or renunciation, effects a complete extinction of

A reverser about to redeem a wadset, must premonish those who hold subaltern infestments granted by the wadsetter.

No. 48. the wadset right, and of course of all subaltern infeftments granted by the wadsetter. The latter will, indeed, be liable in redress to the persons who hold them. But they derive no right from the reverser, who, by acting in this manner, merely exercises the faculty of disincumbering his estate, according to the forms which the law has prescribed.

Answered : A reverser about to redeem a wadset is bound to search the records, and, if he finds that is affected with incumbrances, he should retain the redemption money till the wadsetter produce discharges of them ; or, if this is not done, he should disburthen the wadset himself, and only pay the balance to the wadsetter. If the reverser were not obliged to follow this method, it would be in vain for creditors of the wadsetter to take infeftment, or to record their sasines, as their rights might at any time be annihilated, without their concurrence.

The authorities quoted in support of the opposite opinion refer to a period of our law when base infeftments had not complete effect, unless when followed by actual possession. But the act 1693, C. 13. put base and public rights on the same footing. See 17th December, 1702, Ogilvie against Stormonts, No. 28. p. 8264.

Observed on the Bench : The wadsetter may grant subaltern rights, and therefore the reverser ought to notify to the holders of them his intention of redeeming the wadset.

The Lord Ordinary had found, " that the deceased Neil Macneil, who had a proper wadset of the lands in question, had full power to burden the said lands to the amount of the principal wadset sum."

On advising a reclaiming petition, with answers, the Court unanimously approved of the interlocutor of the Lord Ordinary, on the point of law ; but remitted to his Lordship, to enquire further into the fact, whether the bonds had been already paid.

Lord Ordinary, *Swinton.* Act. *Arch. Campbell, jun.* Alt. *Maconochie.* Clerk, *Menzies.*
R. D. *Fac. Coll. No. 109. p. 240.*

Wadset as affording Qualification to vote ; See MEMBER OF PARLIAMENT.
 See No. 19. p. 16254.

Eik to the Reversion ; See PERSONAL AND REAL.

Usurious Stipulation in Wadsets ; See USURY.

Tack commencing after expiry of the Wadset for a less Duty ; See USURY.
 Order of Redemption ; See REDEMPTION.

Apparent Heir using Requisition, and serving thereafter ; See QUOD AB
 INITIO VITIOSUM.

Wadsetter must Resign upon Redemption, though not expressed in the
 Contract ; See IMPLIED OBLIGATION.

When the Wadset is loosed, and the Wadset Sum becomes moveable ; See
 RIGHT IN SECURITY.

Improper Wadset extinguished by Intromission, requires not Declarator ;
 See DECLARATOR.

See APPENDIX.