

1799. January 22.

JOHN ROBSON *against* JAMES LAURIE and JOHN CORRIE.

James Laurie, and John Corrie, having obtained a general service as representatives of heirs-portioners of John Wallace, brought an action against John Robson, as representative of John Thomson, in which they called for production of a wadset, said to have been granted by Wallace to Thomson in 1660, and concluded, that the wadset should be reduced, the lands declared redeemed, and the defender ordained to cede possession of them to the pursuers.

The retour of the general service was produced.

The Lord Ordinary ordained the defender "to produce the contract of wadset called for."

Instead of complying with this order, Robson raised a reduction of the service, on the ground, that the proof on which it proceeded was defective.

The summons was returned with this defence: "Seen and returned, and refers to the retour of service, and acts thereof, as in the hands of the clerk thereto, respectively." But before the cause was heard, additional defences were lodged, bearing:

1mo, That the pursuer has not produced the wadset right upon which he founds, nor "any title in his person to insist in this process.

"*2do*, That unless he can qualify that he is a nearer heir to the original reverser than the defenders, the service in question is *jus tertii* as to him, and therefore the action ought to be dismissed."

The Lord Ordinary assoilzied the defenders, "in respect the pursuer has produced no title to insist in the action."

In a reclaiming petition, he

Pleaded: *1mo*, The original defence returned was equivalent to taking a day to satisfy the production; and the defenders were thereby precluded from afterwards resorting to an objection to the title.

2do, The pursuer does not pretend to be heir of the reverser, and it is not necessary for him to specify his title to the lands. He is in possession of them, and the true heir of the reverser is alone entitled to remove him. He must therefore have right, *omni habili modo*, to investigate how far the pursuers, in the original action, possesses the character assumed by them, and, a reduction being in point of form necessary, he must be entitled to insist in it. See 23d July, 1630, Lord Pitsligo against Davidson, No. 29. p. 7800; and other cases, *voce* JUS TERTII, Sect. 3.

The petition was refused without answers. Another petition was refused on the 7th February.

Lord Ordinary, *Palkemmet*.

For the Petitioner, *W. Robertson*.

Clerk, *Home*.

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In a declarator of redemption of a wadset, the pursuer produced as his title the retour of his general service, as heir to the reverser. The defender, who was in possession, brought a reduction of the service, but it was found, that he could not insist in it, without production of a title to the lands.

* * * A petition for Robson in the original action was refused, of the same date with the first petition.