

S E C T. III.

Effect of diligence.—Effect of partial payment recovered before diligence or bankruptcy.

1623. *January 30.* LADY DOWHILL *against* LINDSAY of Dowhill.

No 14.
Found, that a wadset was extinguished by comprising the reversion.
But see No 18. p. 14106.

IN a removing, pursued by the Lady Dowhill against Mr John Lindsay of Dowhill, Mr John having *defended* against that removing, by virtue of a wadset infestment, given to him of the lands controverted, the LORDS found, that that infestment became extinct, and Mr John had tacitly passed from the same, and so could not clothe himself therewith, in so far as, since the date thereof, he had comprised the reversion of the same lands, which he had in wadset of before, from the wadsetter, with certain other lands, for the same sum for the which the wadset was granted to him, by the which comprising standing unrenounced, he had prejudged himself of the preceding wadset, and could not come back again thereto, seeing he had, by the comprising, received satisfaction in effect of the sum, whereupon the infestment of wadset was granted.

Act. *Foulis.*

Alt. *Lermonth.*

Clerk, *Hay.*

Fol. Dic. v. 2. p. 354. Durit, p. 43.

* * * Haddington reports this case:

IN a removing, pursued by the Lady Dowhill against Mr John Lindsay, the LORDS found, by interlocutor, that a man who had a wadset of lands for sums of money, thereafter comprising the said lands, or reversion thereof, for other lands, for the sums of the wadset, or any part thereof, renounced, in effect, his wadset, if he abode by his comprising, because he could not comprise but for moveable sums, and so could not comprise for the sums given for the said wadset, unless, in effect, he had passed from his wadset; and that he might not retain both the wadset and comprising *per accumulationem jurium* for the self-same sums, since he could not retain the wadset, and acclaim right of comprising for the self-same sums, which would be in effect double payment for one sum.

Haddington, MS. No 2736.