

by the granter any other manner of way were also paid, so that the wadset could not be redeemed till the sums for which the annual-rent was granted were also paid,

No. 30.

The Lords finding the wadset not burdened with the provision, and the rights being *separata jura*, they declared as to the wadset, the sum therein not being by way of eik to the annual-rent, nor registered as eiks ought to be.

*Harcarse, No. 1028. p. 292.*

1686. *November 24.* LADY DRYBURGH *against* CREDITORS.

No. 31.

The Lady Dryburgh having voluntarily restricted her jointure of sixteen to twelve chalders of victual, in favours of her son, and the heirs-male of his body, secluding heirs-female, with this provision, That if payment was not made at the terms appointed, she should return to the sixteen chalders, and the restriction be void, the terms of payment not being observed, she pursued for the whole sixteen chalders.

Effect of a voluntary restriction.

Alleged for the creditors of the son, who was dead: That they were content to purge bygones, and to pay in time coming.

Answered: This being a voluntary restriction, and no failzie, or *pactum commissorium* in wadsets, was not purgeable now, as had been several times decided.

Replied: The clause not being taxative and personal to the son, was appraisable by his creditors.

The Lords allowed the creditors to purge between and Candlemas; and they did not consider if there was an onerous cause for the restriction or not, as was done in the Lady Dean's restriction.—This decision seems contrary to some former decisions.

*Harcarse, No. 1030. p. 293.*

1688. *June 16.* RAMSAY *against* CLAPPERTON of Wylliecleugh.

No. 32.  
Offer of caution.

One Ramsay, in England, having right to the reversion of a lucrative proper wadset in the person of Clapperton of Wylliecleugh, required him to take caution, and quit the possession; and insisted in a count and reckoning for the superplus above the annual-rent.

Alleged for the defender: The offer was not sufficient; because, *1mo*, It was made by a notary for strangers who were minors, and no procuratory mentioned in the instrument or shewn; *2do*, The offer was but general, without naming any person, so that it could not be considered, if the caution was sufficient.

Answered: The act of Parliament requires no instrument, or that the party should be present, or send a procuratory; and if that had been questioned, a procuratory