

had been no special obligation, the setter would have been liable. Here there are not words sufficient to relieve him from that obligation.

1766. *August 9.* JAMES GRIERSON of Dalgoner, *against* ROBERT FERGUSSON of Isle.

WADSET.

In a Declarator of Redemption, at the instance of a Singular Successor of the Reverser, found not competent to the wadsetter to object to the pursuer's title to the right of reversion, which was not claimed either by the heir or creditors of the reverser.

UPON the 9th June 1663, James Grierson of Dalgoner granted a wadset of 10 acres to Mr William Black, minister of Dalgarnock, redeemable on payment of 900 merks, at any term of Whitsunday or Martinmas, even upon a premonition of 40 days. On this wadset Mr Alexander Fergusson, disponee of the son of the wadsetter, was infest in 1694. Fergusson of Isle is his son and heir.

In 1679, William Grierson, under the character of eldest son and heir apparent of the reverser, granted a disposition of the estate of Dalgoner, comprehending the ten acres, in favour of James Grierson. In 1696, James Grierson, the disponee, deduced an adjudication in implement against William Grierson, the disponer. This adjudication bears, that William had been charged to enter heir in special to James Dalgoner, his father, and to ——— his goodsire, and to ——— his grandsire. Blanks are left in the summons, not only for the designations and names of those persons, but also for the date of the special letters, date of the execution, and messenger's name. In the production, as marked in the decret, the letters of special charge and the executions, are said to have been produced, as of the date, tenor, and contents above-mentioned, that is, as mentioned in the libel. From the records of the Signet Office, it appears that the bill for the summons of adjudication is still blank as to the lands.

James Grierson, now of Dalgoner, served himself heir in general to the adjudger; and, having expedite a charter of adjudication, premonished Fergusson of Isle to receive his money and consign it. Upon this he brought an action for having it declared that the wadset lands were redeemed, as at Whitsunday 1765.

The wadsetter objected to the pursuer's title, and also to the form of the redemption. The Lord Auchinleck, Ordinary, "repelled the objection to the pursuer's title, but sustained the objection to the order of redemption, in so far as to prevent its taking effect at Whitsunday 1765; but found that the order already used is sufficient for redeeming the lands libelled at Whitsunday 1766."

On the 28th July 1766, the Lord Ordinary, "having considered a representation and answers, and, specially, that the adjudication objected to is in implement of a disposition, and that the objection is not moved by the heir of William Grierson, or by any of his creditors claiming right to the reversion, which

is adjudged; adhered to the interlocutor,—repelling the objections to the pursuer's title; and also adhered to the second point of the interlocutor,—finding the order of redemption used sufficient for entitling the pursuer to insist in the redemption.

Fergusson, the wadsetter, reclaimed; and the only thing material which he offered, respected the pursuer's title to redeem. As to this, he pleaded that the adjudication was null, there being no evidence of its having proceeded upon a special charge; for, although the decret bears production of such charge as libelled, yet the libel neither mentions its date, tenor, nor contents; and, further, that the bill for adjudication is still blank as to the lands. The defender has right to move the objection as well as the heir or the creditors of William Grierson would have had. A wadsetter is entitled to retain possession of the lands wadsetted, until they be regularly redeemed by the person having right to the reversion. Of consequence, he may object to the title of any one pretending to redeem. In like manner, when a reversion is to heirs-male, he may object to redemption used by heirs-of-line; or, if the right of reversion is assigned, he may challenge the title of the assignee: although, in the one case, the heirs-male should move no objection, nor, in the other, the disponent. It is, therefore, equally competent for the wadsetter to object against an adjudication in implement, although no objection be moved by the heir, or by the creditors of the person in implement of whose disposition such adjudication was led.

On the 9th August 1766, the Lords adhered.

Petitioner, A. Wight.

1766. November 14. ALEXANDER KEITH, late Provost of Aberbrothock, against JAMES MEIKESON and JOHN SHANK.

JURISDICTION.

An appeal having been entered before the Circuit Court of Justiciary, under the 20th of Geo. II., found not competent for the Court of Session to review their judgment in a Suspension, although the judgment was in absence.

ALEXANDER KEITH insisted in an action before the bailies of Aberbrothock against James Meikeson, for payment of L.7 : 9 : 7 sterling.

The bailies pronounced decret against Meikeson for the sum libelled, with one shilling in the pound of expenses.

Meikeson appealed to the Circuit Court at Perth, in terms of the statute 20th Geo. II., and John Shank became his cautioner.

He failed to insist in his appeal.

The Lords of Justiciary at the Circuit Court admitted protestation in common form; allowed the decret of the bailies to be put in execution, and decerned for L.1 : 19 : 6 sterling in full of expenses. They also ordained execution to pass.

Upon this judgment, and upon the decret of the bailies, Keith charged Meikeson and Shank his cautioner.