

REDEMPTION.

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the comprisings, which were subject to reversion, and not the liferent, which was diverse right, and of a different nature from the former. Which *allegance* the LORDS found relevant.

No 32.

Spottiswood, p. 265.

* * The latter part of this case is reported by Durie, No 45. p. 3711. *voce* EXECUTOR.

1631. December 8. CLEISH against SANDERS.

IN a redemption, whereof the reversion was produced, bridled in the date, and the defender *alleging*, That no process could be granted, while the same were discovered, that he might see the date and whole contents thereof; and the pursuer *replying*, That the defender should declare if he had any discharge thereof, and should condescend on the date of the discharge, which being done *simul et semel*, he was content that the date of his reversion should be opened, as is usually done in improbations; the LORDS found, that no process could be granted while the date of the reversion were seen; and that the defender could not be compelled to declare if he had a discharge thereof, or condescend on the date thereof, but that he might do the same or not as he himself pleased; for there was no more reason that the date of his reversion should be kept obscure, than that the date of any other obligation, or writ, whereupon actions are founded, should be so kept; and the case of improbation is not alike, where the pursuer calls for the defender's writs oftentimes *ad fundandam litem*, and therefore there is required mutual condescending.

Act. *Nicolson.*

Alt. *Stuart.*

Clerk, *Hay.*

1631. December 8.—IN the above-written cause of the Laird of Cleish, the LORDS sustained the premonition made by the procurator, constituted to that effect, albeit at that time of the using of the order, the procuratory was not read and shewn, without which had been done, the defender *alleged*, The order could not be found lawfully used; which was repelled; seeing now the constituent confirmed the procuratory, and deed done by virtue thereof, and when the premonition was made, the party enquired not for the procuratory, nor desired to see it, or to have it read: *Item*, A service of one as heir to him to whom the reversion was granted, being deduced before the Bailie of the regality of Dunfermline, was sustained, albeit it was not retoured to the chancellery, seeing it was deduced before the Bailie of the regality of Dunfermline, who has their own chapel, and so it was not necessary to be retoured to the King's Chancellery. *Partibus ut supra comparentibus* See SERVICE OF HEIRS.

Fol. Dic. v. 2. p. 322. Durie, p. 605.

No 33.

An order of redemption was sustained, though the procuratory was not read nor seen, it not being required.