

No. 13.

A wadsetter must, after redemption, not only renounce, but procure free possession to the reverser.

1665. *January.*LAIRD OF LINTON *against* LAIRD OF TORSONCE.

The deceased Laird of Linton and Sunderlandhall gives a proper wadset of the lands of Kippilaw to the deceased Sir George Ramsay of Williecleugh, redeemable for 5,000 merks; which wadset is comprised by Pringle of Torsonce, who had married Williecleugh's daughter, from the heir of Sir George; and upon this comprising, he requires Sunderlandhall, as heir to his father, for payment of the 5,000 merks and charges; who suspends upon this reason, that conform to the proper wadset, his father had put Sir George Ramsay in possession these many years; and therefore, how, and by what conclusion he lost possession, he knows not, seeing Andrew Ker of Kippilaw is, and has been in possession these many years; and therefore, unless the pursuer not only renounce the wadset, but put the defender in possession, he ought not to be decerned to pay. It was answered, That the pursuer being a compriser, he was not, nor is obliged to seek possession, but finding the defender obliged to pay upon requisition, he may lawfully require, and upon payment he shall renounce the wadset; upon which renunciation, the defender may pursue the said Andrew Ker for possession, who bruiks by no deed of the pursuer. Replied, That the pursuer can be in no better case than his author Sir George Ramsay, his own father-in-law, who, if he had been pursuing, the defence would have been very relevant against him, seeing he was put in the possession by virtue of the wadset; nor can the defender know, how Andrew Ker got the possession, whether by a deed of the pursuer's or his authors, or what other way, it being clear, that the wadsetter, or compriser of the wadset, should put the granter of the wadset, upon his payment of his money, in his own place and possession, and the compriser should before the charge, first *agere* against the said Andrew, upon his real right, that it may be known *quo modo et jure* he possesses. The Lords found, that the pursuer should not only renounce, but re-possess before payment.

Gilmour, No. 138. p. 100.

1665. *July 27.*LILIAS HAMILTON *against* Her TENANTS.

No. 14.

Lilias Hamilton being infert by her husband, in life-rent, pursues her tenants. Compearance is made for their present master, who alleged, that her husband's right was only a wadset granted by him, and that he had used an order, and had redeemed the wadset, and paid the money to the pursuer's husband; and neither knew, nor was obliged to know the pursuer's base infertment from her husband, the wadsetter, which had never any other possession, but the husband's. It was answered, That the pursuer's sasine being registrated, he was obliged to know the same, as well as if it had been an inhibition, especially seeing there was no process