

1666. February 21. OGIIVIE against ———.

No. 17.

The like case (as the above) was decided betwixt Ogilvie and ———, where this was farther represented, that the summons could not be sustained, unless the offer had been made by way of instrument before the summons; yet the Lords sustained the offer instantly made to have effect *ab hoc tempore*, but not from the citation. It was also further alleged for the defender, that there was now no caution offered. It was answered for the pursuer, that there needed no caution, if the wadsetter chused to retain the possession, because the wadset itself was sufficient security. It was answered, That they were not obliged to declare their option, till caution was first offered by the granter of the wadset, and the statute behoved to be strictly observed. It was answered, That there was here no detriment to the wadsetter, and the granter of the wadset might be so poor as not to be able to find caution.

The Lords found, in respect of the act of Parliament, that caution behoved to be offered, and would not exceed the terms thereof.

Stair, v. 1. p. 623.

1666. December 8. URQUHART against CHEYNE.

No. 18.
Whether proper or improper?

Sir Thomas Urquhart of Cromarty having disposed to Mr. William Lumisden a tenement of land and salmon-fishing, for surety of 4000 merks borrowed from Lumisden, the above-mentioned Sir Alexander Urquhart, having right by comprising to the said lands and fishing, and reversion of the said wadset, pursued a count and reckoning against Walter Cheyne, having right to the said wadset, and to hear and see it found, that the sum due upon the wadset was satisfied and paid by the said Walter and his author's intromissions. It was alleged, That the wadset being a proper wadset without a back-tack, the defender was not liable to count; and though he were, he was not liable to count but since the date of the right, and for his own intromission. It was replied, That it was a right granted for security, and that by the contract of wadset, and the eik to the reversion thereafter, the right was redeemable upon payment of the principal and annual-rents that should be unsatisfied; whereas, in proper wadsets, there is an *antichresis*, and the rents of the land belong to the wadsetter in lieu of the annual-rents, whereto the debtor is not liable.

The Lords found, That though the right was not clear and express, that the wadsetter should have right for security, and until he be satisfied by intromission or otherwise, yet the reversion being in the terms foresaid, it was *actum*, and intended, that the said wadset should not be a proper wadset, but only for surety, as said is.—See No. 38. p. 13507. *voce* REDUCTION.

Dirleton, No. 57. p. 24.