

been uplifted yearly, and to be employed on annualrent; but they found the second allegiance relevant, not to free the tutor of payment of the annualrent itself, though in secure hands, because he ought to have uplifted it, and had it ready; but found him free of the annualrent thereof, there being a competent time in which he might have given it forth, before the pupilarity passed, if he had not been prevented by death; but ordained Kintore to assign to Boyd the right of the annualrent, that he might recover the same from the debtors.

It was further *alleged* for Kintore, That Coatfield, the common author, his disposition to Mr Robert Logan, John Boyd's author, was after Kintore's author's inhibition. It was *answered*, That albeit the disposition by Coatfield to Mr Robert Logan be posterior, yet Mr James' Raith had a disposition of the same lands anterior, who, by consenting and joint disposing to Mr Robert Logan, the lands of Mountlothian, did in effect constitute him assignee to his anterior disposition, which is now accomplished by the adjudication, adjudging the right of the lands from Coatfield's heirs, and thereupon infeftment has followed, by precepts out of the Chancellery, for supplying Coatfield's procuratory of resignation, which took no effect in his life. It was *answered*, That Mr James Raith's right being but a wadset, his consent cannot import the transmitting of his right, albeit he jointly disposed, seeing he transmits no part of the sums in the wadset, and therefore does no more in effect but restrict his wadset to the remanent lands, and consents that Coatfield should dispose these lands to Mr Robert Logan, and so it imports but *non repugnantiam*, and a provision that he nor his successor should not quarrel their right upon his anterior right.

Which the LORDS sustained. See No 40. p. 503.

Fol. Dic. v. 1. p. 439. Stair, v. 1. p. 293.

1667. February 23. EARL OF ERROL *against* HAY of Crimunmogat.

THE Earl of Errol pursues a declarator of redemption against Hay of Crimunmogat: It was *alleged* absolutor, because the defender stands infeft upon a charter granted by Barclay, with the consent of the Earl of Errol, *pro omni suo jure*, long after the reversion granted by Barclay, whereupon this redemption proceeds. It was *answered* for the pursuer; *imo*, That the Earl only consents, and the charter bears that the sums were paid to Barclay, whose right produced is a wadset, granted by the Earl of Errol and Hay of Urie, bearing an express reversion to any lawful eldest son of Hay of Urie; which failing, to the Earl of Errol. *Ita est*, that the time the Earl subscribed this charter, Hay of Urie was alive, and had sons, at least *in spe*; so that the Earl of Errol had not thereby the right of the reversion, and therefore his consent, without any sums received, or any absolute wrrrandice, cannot extend to any supervening right, which he then had not actually, but *in spe et in apparen- tia*. *2do*, The Earl's consent to Barclay's disposition, who had only the right

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No 80.

A wadsetter disposed his lands without mentioning them to be redeemable. Though the person who was substituted in the reversion consented to the disposition, it was found that he was not precluded from using the reversion.

No 80.

of wadset, not bearing irredeemable, or *absque reversione*, cannot take away the express reversion of Barclay's right; for albeit an heritable right be presumed irredeemable, *presumptio eedit veritati*, and it cannot take away a reversion where it is.

THE LORDS found that the reversion granted in Barclay's right was not taken away by this posterior right and charter, but that the Earl's consent imported only his favour and good will to transmit the right to the defender; in respect of the allegiances aforesaid.

Fol. Dic. v. 1. p. 438. Stair, v. 1. p. 449.

1668. January 8.

FORBES against INNES.

No 81.

IN the case, Forbes *contra* Innes and Dalgarno, the LORDS found, That a wife having no right for the time, to lands disposed by her husband, and having, at the desire of the buyer, consented and sold her right, if she thereafter acquire from another person a right to the said lands, is not by her consent concluded, but may pursue and evict the lands upon her right; her consent operating only, that upon any right from her husband, or then in her person, she cannot question the right whereto she hath consented; and the brocard that *jus superveniens accrescit* being to be understood of *jus superveniens auctori*, whereas a consenter is not author.—See *JUS SUPERVENIENS*, &c.

Alt. Lockhart, Wedderburn, & Thoirs.

Fol. Dic. v. 1. p. 438. Dirleton, No 128. p. 52.

* * * Stair reports the same case :

MR JOHN FORBES, as assignee to Margaret Allardice, having obtained decret of removing against Margaret Innes, for removing from the lands of Savet, wherein the said Margaret Allardice is infest in liferent; which being suspended, it was *alleged, imo*, That this pursuit is to the behoof of Margaret Allardice, who could not obtain a removing against the defender, because the defender's husband being infest by the said Margaret Allardice's husband, and author of the lands of Savet principally, and of the lands of Govan and others in warrandice, the said Margaret Allardice did consent to the disposition of the warrandice lands, by which she obliged herself to do no deed in the contrary of that right, and is also bound in warrandice with her husband; *ita est* her pursuing this action is a deed in prejudice of the right of warrandice-lands, in so far as thereby the person having right to the principal lands, upon eviction recurs upon the warrandice lands, and so the consenter's own deed prejudices the same. It was *answered*, That by deeds contrary to warrandice were only understood some right granted by the disponent or consenter, in prejudice of the right consented to, but nowise a pursuit upon any other right of the consenter; for it