

1670. July 22.

JOHN FORRESTER *against* BROWNIE.

THIS was a declarator of an order of redemption used, of two sundry wadsets of one tenement. ALLEGED, the order cannot be declared; because, *1mo*, The instrument bears no numeration to have been made of the money as it should have done, but only that he was there with a bag ready to pay the money, in which bag there might have been only slate stones, and so it is null. *2do*, That order can never be sustained, because the terms and tenor of the reversion were not kept, in so far as it was provided by the letter of reversion that the order should be used at Whitsunday 1668, and yet the same was not used till the Whitsunday thereafter; whereas reversions are *strictissimi juris et præcisa earum forma est servanda*.

ANSWERED to this; that *esto* he did not keep the precise tenor of the reversion, yet that can never take away from him his lands, or right of reversion called in law *jus de retrovendendo*; seeing its strictness is not so great unless there had been a clause irritant declaring that, if the order were not used at such a term, the reversion should expire, which was not here.

They were to have the Lords' answer on this, whether or no a party that had neglected to use the order of redemption conform to the words of the reversion, may yet use the same, yea or no.*

Then *3tio*, ALLEGED, the order is null; because, it being declared by the reversion that it should not be lawful to the granter of the wadset to redeem, till such time as he paid also all the expenses waired by the wadsetter haver on reparation of houses, &c. which expenses being given up in count at the pretended order, he refused to allow the same, and so the order is null. *4to*, Though the money was consigned at the time of the order, yet the same being uplifted shortly after, the defender must be freed of the annualrent of the same since the consignment, and the pursuer must be liable therein.

The Lords found this last relevant.

Act. Trotter.

Alt. Wallace and Seaton.

Advocates' MS. No. 90, folio 83.

1670. July 22. GIBSONE, Brother to DURIE, *against* HALIBURTON of Innerleith.

THIS was a charge upon a bond granted by the defender to Mr. James Reid, and assigned to the charger by him; which was suspended, *1mo*, Because the time of the granting thereof he was a minor, having curators, and he gave the bond without their consent. ANSWERED, Ought to be repelled, in respect the bond is not only subscribed by himself but by two of his curators, which makes a *quorum*. REPLIED, That will not fortify the bond, because by his act of curatory three are appointed only to be a quorum.

He is ORDAINED to produce the act of curatory before answer.

The *second* reason of suspension, (and he had also a reduction on that same

* This order was found by the Lords lawful.