

ing led against Ludovick Keir, granter of the wadset to Dr Scott, and so ought to be preferred ; because Dr Scott's wadset was extinguished, in so far as his wadset, being affected with a back-tack, for payment of the annualrent of the sums lent upon the wadset, bearing an irritant clause, without any declarator obtained thereupon, he did enter to the possession of the whole lands, and did intromit with the rents thereof, which did amount to as much as the whole sums due upon the wadset, both principal and annualrents ; which was offered to be proven.

The Lords did prefer Bailie Boyd *in hoc judicio possessorio* ; and found, That an annualrenter or a wadsetter, with a back-tack, being in possession, that, until a decret be obtained against him, finding that they are debtors, by intromission, with as much as will satisfy the principal sums, and thereby their right extinguished by compensation,—that a singular successor, by disposition or comprising, may, by virtue of their right, possess ; and that an allegiance of further intromission, being after they were denuded of the lands, will not meet a singular successor ; but, if the wadsetter himself, who had been in possession, had been compearing, it is thought the allegiance could not have been sustained against him.

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1671. *November 30.* ISABEL COLINE, Relict of GILBERT GRAY, late Provost of Aberdeen, *against* JOHN GRAY, his Apparent Heir.

GILBERT Gray, being obliged to employ 25,000 merks upon land or annualrent, to himself and her in liferent, and the children of the marriage in fee ; the said Isabel did pursue her husband's heirs to employ 5000 merks of the foresaid principal sum, in respect that she was only infest in lands which were wadset to him, redeemable upon payment of 20,000 merks.

It was ALLEGED for the defender, That the lands wherein she was infest were worth of yearly rent as much as would amount to the annualrent of 25,000 merks, which were given her in satisfaction of her contract of marriage ; and if there were any thing deficient, they would make up the same.

It was REPLIED, That the wadset lands, bearing a reversion of 20,000 merks, could only be an implement of the contract *pro tanto* ; and, albeit the rents were more worth than the annualrent, yet, it being a wadset, and she liable to the hazard of evil tenants, and other burdens, could be no further satisfied thereby but as to the implement of 20,000 merks.

The Lords, having considered the relict's infestment, that it did not flow from the granter of the wadset, but from her husband, as having right, not only to the lands, but likewise as having right to an apprising, and to a tack of the teinds of the lands, which fell not under the wadset ; did find, That the rent of the lands, being equivalent to the annualrent of 25,000 merks, to which she was provided, she could crave no further ; but, if the right had flowed from her husband as a wadsetter, only for 20,000 merks, the case had been more difficult : But yet it seems, in reason, that she, being in possession of as much as she was

provided to, she could not crave any more ; and that the proper wadset being lucrative, and exceeding the annualrent of the money lent, she ought not to have the benefit thereof, but only that which was intended by her contract of marriage should be secured to her free of all burdens ; which was done by the right of the wadset so long as the same should remain unredeemed ; albeit, in the case of redemption, the heir would be decerned to employ 25,000 merks.

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1671. December 5. MR GEORGE SCOTT *against* MR JOHN ELEIS.

IN a reduction of a bond, granted by the said Mr George, for the sum of 1100 and odd pounds, as the balance of an account, upon this reason, That since Mr John was tutor to the pursuer, and that within three months after his majority, and *ante redditas rationes*, he did offer him an account, when he was upon his contract of marriage, refusing to go along with him, unless he would grant bond for the balance thereof ; whereas the articles themselves of the account were most unjust, and such as ought not to be allowed, and wherein the pursuer was circumvened ;—it was ANSWERED, That the pursuer being major, *sciens et prudens*, and having the account given him to advise the same for several weeks, he cannot be heard to reduce the same *ex capite fraudis*.

The Lords did assoilyie from the reason ; but superseded all execution for payment until the pursuer should insist in his count and reckoning against the said Mr John, that it might be found if he had as much in his hands as would satisfy and compensate the said bonds.

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1671. December 6. ALEXANDER MERCER *against* GORDON of TULLICHANDIE.

THERE being a wadset, granted by Seaton of Shethine to William Gray, provost of Aberdeen, of the lands of Meldrum, redeemable upon payment of the sum of 4000 merks ; as likewise, Mr James Skein did give a bond of corroboration, but suspended all requisition until some years thereafter ; at which time Tullichandie did grant a new bond, whereby he became obliged, that, in case two terms should run into the third unpaid, that then he should pay the sums contained in the wadset, he being assigned thereto for relief. Whereupon the said Alexander Mercer, as having right from the Earl of Haddingtoun, who had a gift of *ultimus hæres* to the said William Gray, did pursue the said Tullichandie upon that ground,—That there were three terms' annualrent outrun.

It was ALLEGED for the defender, That there never have been intimation made to him till long after three terms were outrun ; and that, in the meantime, the debtor becoming irresponsal by the diligence of other creditors : whereas Wil-