

right to the estate of Lauderdale, which they had or could pretend any manner of way, which ought to be limited by virtue of the rights redeemed, for there is no reason to exclude any other right, and particularly they condescend upon the right of some steads in Lammermoor, whereunto they have a several undoubted right of property, and which the Lords have already reserved, as accords of the law, and therefore there ought to be the like reservation of any other right they have. It was *answered*, That the decret of declarator bears expressly, to renounce all right whatsoever, which is the common stile of declarators of redemption; which, as it is specially a declarator of redemption, so it is generally a declarator of right; and therefore in the declarator of redemption, the defender might have proponed a defence upon any distinct right, which, if instructed, would have been accepted and reserved simply from the general clause; or, if there had been any evidence of it, it would have been reserved as accords; and the charger is yet willing that the like reservation be as to any right the suspenders shall condescend upon, or instruct and evidence; and there is here a special consideration that the special clause should stand, because there is an expired apprising of the estate of Lauderdale assigned to the suspenders by the Duke's desire, upon the same terms, with the tailzie and reversion contained in the contract of marriage, which, if it be not renounced by that general clause, would breed a new plea and process.

THE LORDS sustained the draught of the renunciation as to the general clause, as being conform to the decret of declarator *in foro*; but allowed the suspenders to condescend upon any several right, not containing the like reversion; and if they could produce and instruct the same, declared the same should be reserved simply; or if they could but give any good evidence thereof, the same should be reserved as accords.

*Fol. Dic. v. 1. p. 599. Stair, v. 2. p. 409.*

1676. February 9.

CLAPPERTON *against* KER.

THE right of a wadset being comprised, the compriser did require for the sum due upon the wadset, and pursued the representatives of the debtor. It was *alleged* for the defender, That he could not pay the money, unless the pursuer should put the defender in possession of the lands. It was *answered*, That the pursuer not having possession himself, and having loosed the wadset by requisition, he could not put the defender in possession; and the defender might have taken possession by his own right; and it was enough that he was content to renounce the wadset, especially seeing neither the pursuer nor his author had done any deed to put the defenders in worse case as to possession; and the possession was apprehended and still continued by an anterior compriser; and the pursuer had obtained a declarator, finding the said comprising to be satisfied and extinct, so that the defenders might easily recover possession.

No 76.

manner of way, was sustained; but the Court allowed the defender to condescend upon any right which he had separate from that acquired from the pursuer, which they declared should be reserved to him as accorded.

No 77.

Found in conformity with No 74. P. 9219.

No 77.

THE LORDS, notwithstanding, found the allegiance relevant, and that the pursuers should put the defenders in possession.

*Fol. Dic. v. 1. p. 599. Dirleton, No 330. p. 158.*

\* \* \* Stair reports this case :

GEORGE CLAPPERTON, as having right to a wadset of the lands of Kippilaw, granted by Sir George Ramsay, wherein Ker of Sunderland-hall was cautioner in the requisition, pursues thereupon for payment of the sum. The defender *alleged* no process, until the pursuer denuded himself of the wadset-right, and return the granter of the wadset to the possession thereof. It was *answered*, That he was not obliged, unless by some deed of his the possession had been interverted ; but much less where it appears not, that the granter of the wadset did put the wadsetter in possession. It was *replied*, That it was sufficient that the wadsetter or his successors had ever obtained possession by the wadset-right : *Ita est*, Torsonce, who apprised from the wadsetter, attained possession of the wadset-lands. It was *duplied* for the pursuer, That Torsonce having apprised the wadsetter's whole estate, did only promiscuously possess the whole for a time ; and being satisfied by intromission, did cease, but the pursuer derives no right from him, but as a second appriser, from the wadsetter.

THE LORDS found, That if the granter of the wadset did put the wadsetter in possession, requisition could not be effectual till the possession were restored, unless the wadsetter had been excluded therefrom by a better right ; but found that the first appriser's promiscuous and temporary possession did not oblige the second appriser to return that possession.

*Stair, v. 2. p. 412.*

1677. November 22.

Sir ARCHIBALD STEWART *against* The DUKE of HAMILTON.

No 78.

The wadsetter upon redemption is bound to restore the possession, notwithstanding of any separate right he may have in his person, which will be reserved to him to insist upon as accords.

THE Laird of Minto and his Lady being infeft in conjunct-fee of the five pound land of Coats, the Lady having obtained divorce upon her husband's fault, and thereby having right to her liferent, dispooned her liferent-right to the Duke of Hamilton ; and before her death, there is a minute betwixt the Duke and Minto, wherein he dispoones to the Duke his estate heritably, and therefore gives him an extended disposition, bearing the price to be paid, whereupon the Duke was infeft, but gave a back-bond to Minto, bearing, ' That there was only L. 1000 of the price paid ;' and if that sum were repaid betwixt and such a day, he obliged himself to re-deliver the disposition, and to denude himself. Minto assigned this back-bond to William Stewart, writer, who thereupon inhibited Minto ; and, after the inhibition, Minto, by his disposition, relating the said minute and former disposition, and that Minto was