

No 43. he offers to prove, that he offered 90,000 merks, which is 2000 merks more than Sir John's price.

THE LORDS found that they would only restrict the clause irritant, to the effect that the granter of the wadset might suffer no detriment, which they found to be effectual, if the wadsetter offered as great, or a greater sum than the other buyer, before any bargain agreed between them, either in word or writ; but found it not probable by witnesses, but by writ, or the Earl's oath; and found that a general offer was not sufficient, unless it had expressed a particular sum.

*Fol. Dic. v. 1. p. 487. Stair, p. 433. & 441.*

1679. January 17.

BEATSON *against* HARROWER.

No 44.

In a sale for a competent price, where the purchaser has no power to require his money, redemption is only competent within the time and in terms of the reversion.

THERE was a disposition of some tenements and roods in the Link-town of Kirkcaldy, granted by George Beans to one Kennedy, bearing the lands redeemable within five years, for payment of 700 merks, being Beans's own proper money, acquired by him, and not borrowed. Beatson now having right, pursues declarator of the land as his irredeemably, not having been redeemed within the time of the reversion. The defender *alleged*, That this being a wadset right, though it bears only a temporary reversion, yet that it is *pactum legis commissoriæ in pignoribus*, which the civil law rejecteth, and our law alloweth to be purgeable at any time before declarator, by consigning the sums in the reversion; as being exceedingly penal, procured from indigent debtors in their distress, and which therefore the Lords, *ex nobili officio*, modified to the true interest, as they do in all other penalties in bonds, though excluding all modifications. It was *answered*, that a reversion may be where there is no *pignus*, but a true vendition for a competent price; and then there is nothing penal, but favourable, which appears to be in this case, where there is no requisition, and therefore neither *creditum* nor *pignus*, and where the reversion is only competent upon the proper means and money of the disponent, without borrowing.

THE LORDS found, that if there were no requisition, but a sale for a competent price, the lands are not redeemable but within the time, and on the terms in the reversion.

*Fol. Dic. v. 1. p. 486. Stair, v. 2. p. 676.*

No 45.

A creditor who had an expired legal entered into an agreement with his debtor, re-

1697. July 20.

MARQUIS of ATHOLE and EARL of TULLIBARDINE *against* JOHN CAMPBELL of Glenlyon.

I reported the Marquis of Athole, and the Earl of Tullibardine, his eldest son, against John Campbell, now of Glenlyon; being a declarator of the ex-