

No 372.

1680. June 30. EDWARD RUTHVEN *against* The EARL of CALLANDER.

THE LORDS found, Though a minor's curators cannot sell heritage, without a decret of vendition, yet they may require the money of a wadset, and renounce it; and, if a decret be needful, the decret of suspension of Session is sufficient. They also repelled this objection against the instrument of requisition, that Callander offered to prove, by the procuratory and witnesses, only 24,000 merks of the sum was required, and not the whole, unless he would consign L. 40 Scots, and offer to improve it; because, the notary's common instruments be not probative till the witnesses inserted be examined; yet instruments of premonition, requisition, resignation, and sasine, are probative of themselves; because, they depend on procuratories and precepts, and are the foundations and parts of securities of estates.

Fol. Dic. v. 2. p. 242. Fountainhall, MS.

1710. February 10.

The EARL of LEVEN, and other CREDITORS of FRENDRAGHT, *against*
THEODORE MORISON of Bognie.

No 373.

A reverser having made offer of a bond to the wadsetter, and caution to pay him his annual rents, on his ceding possession, in terms of the act 62d, Parl. 1661, and taking instrument thereon, the instrument, though but the assertion of a notary, was found to be probative of the offer, though the bond itself was not produced.

THE lands of Bognie being wadset in the proper form by the deceased Viscount of Fren draught, *in anno* 1635, for 10,000 merks, to ——— Morison of Bognie, who got infeftment and possession; in the year 1647, David Gregory of Kinnardie apprised the whole estate of Fren draught, comprehending Bognie, and in the 1673, disponed his apprising, then expired, containing the reversion of Bognie, in favour of the deceased George Morison of Bognie, who was infeft upon a charter under the Great Seal; and, in May 1674, granted a back-bond, bearing, that most part of the price given to Gregory for the apprising was the Viscountess of Fren draught's money; and, therefore, obliging him, as a trustee, to denude of the said apprising, in favour of the Viscount and Viscountess, in liferent, and the heirs of the marriage in fee; which failing, to the heirs and assignees of the Viscount; excepting and reserving always as much of the said lands as would pay the sums of money that he had advanced, or should advance for redeeming the estate of Fren draught, or whatever other debt shall be due to him by the Viscount before the date of the disposition, to be granted by him in manner foresaid. *In anno* 1680, Robert Dunbar of Burgie adjudged the estate of Fren draught, and also Bognie's back-bond, and, in March 1683, offered security to him for the annualrents of the principal sum in his wadset; and craved that he might cede the possession of the wadset lands, or be countable for the superplus rent, conform to the act of Parliament 1661: Whereupon he raised a declarator, and count and reckoning; now car-