

As to the negative prescription on the statute 1617, it is true, the same bears an exception of reversions *in gremio*, or registered apart ; but that can afford no objection, seeing the act is plainly to be understood of perpetual reversions, which being taken as *meræ facultatis*, are excepted from the prescriptions in these two cases : But this cannot be applied to a reversion limited to a certain time, which, though it be *in gremio, juris*, yet, upon the face of the right, it cannot appear otherwise than as it is expressed, that is, temporary, and, *ipso jure*, perishing by the lapse of time, though, *ex officio judicis*, the reverser may be reponed ; but this title to be reponed is then the only reversion that remains, and, like all other actions or reversions, must be subject to a negative prescription.

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*Duplied* for the pursuer ; The decret of removing can never supply the want of a declarator, since neither the nature of the action, nor the inferior judge before whom it was carried on, was competent for that purpose ; more especially, as it might have been intended immediately after the date of the right ; which demonstrates, that it could stand in no stead of a declarator of irritancy of the reversion. It is true, the reverser might have taken that opportunity of paying the money, but his circumstances were then such as he could not procure it, and therefore behaved to submit to a removing ; but that could not exclude him from paying at any time thereafter, and claiming his right before declarator was obtained.

THE LORDS found, That in respect the reverser or his successors have not offered to redeem since the term of Martinmas 1695, when, by paction, the right of reversion was to become void, which is now more than 40 years ago ; and that the defender and his father have possessed the lands without quarrel ever since the 1705, the right is now irredeemable.

*C. Home, No 102. p. 160.*

1749. July 21.

KERSCALLAN against BROWN.

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WHERE a disposition had been made in 1699, of a piece of ground, in consideration of L. 700 Scots paid, with a clause of reversion, ‘ That in case the granter should, on Martinmas-even 1704, pay or consign, in manner therein mentioned, the said sum of L. 700, the disponee should renounce his right to the said lands ; but if it should happen that the disponer should fail to redeem, as aforesaid, the lands should remain with the disponee for ever,’ but without any clause of requisition ; on which disposition the disponee had possessed for upwards of 40 years, who nevertheless could not plead prescription in respect of the minority of the heirs of the disponer : In an action at the instance of the person now heir to the disponer, to have it found and declared, that it is still competent to him to redeem, the LORD ORDINARY, “ in respect that, at the date of the wadset, the rent of the lands wadsetted was no more than equal to the

**No 52.** interest of the wadset sum, as also in respect there is no clause of requisition in the wadset, and that the wadsetter had continued so long in possession after the term appointed for the redemption; found the pursuer not now entitled to redeem, and assoilzied;" and on advising petition and answers, " the LORDS adhered."

The question turned on this, Whether it was a pledge, or a sale at an adequate price. If a pledge, then, although even *in pacto legis commissariæ*, the redemption is barred by the lapse of 40 years (*vide supra* Nov. 10. 1738, Pollock against Storie, and which decision has been followed in all the like instances which have since occurred), yet here the minorities would have kept the redemption open; but if a sale at an adequate price, then the old act of sederunt applies, which declares irritancies of reversions in sales to be effectual according to the agreement of parties. And so the case was here considered to be, in respect no proof was offered by the pursuer, that, at the date of the wadset, the lands were of a higher rent than the annualrent of the sum, and that there was no clause of requisition, whereby it would have been a most unequal bargain, if the right of redemption had been to continue for 40 years.

*Fol. Dic. v. 3. p. 337. Kilkerran, (IRRITANCY.) No 2. p. 297.*

**No 53.**  
Irritancy not incurred by neglecting the order of redemption in a decree of declarator.

1769. February 3.

LEITCH against SWAN.

JAMES LEITCH disposed his lands of Ardoch to Henry Swan, who granted a back-bond, declaring them redeemable for payment of a certain sum, but under condition, that unless the money was paid on or before Martinmas 1763, or consigned at the parish church of Kilwinning, in the hands of a responsible person, upon 40 days lawful premonition, the back-bond should be null, and the lands irredeemable.

Upon the term day of Martinmas 1763, after Henry Swan's death, Leitch required a renunciation of the wadset, upon a tender of a bill bearing to be accepted by Henry Swan, and of the balance in money.

This tender was refused, and an action brought by the tutors of Swan's son, an infant, for reducing the bill as forged, and declaring the irritancy to have been incurred.

The bill was declared to be vitiated and improbativè, and the LORD ORDINARY pronounced an interlocutor, whereby he found the lands still redeemable: " But, in case the defender shall not, 60 days preceding the term of Martinmas 1767 years, intimate to the pursuer and his tutors, in presence of a notary and witnesses, his intention to redeem, and, in case he shall not, on the said term of Martinmas 1767, between the hours of 12 at noon, and 1 afternoon, consign, in the Bank of Scotland, the principal sum and annualrents due thereon, found the lands, from and after the said term of Martinmas 1767, shall belong in property to the pursuer, and be irredeemable."