'objection to her title, that he be not dispossessed of his estate at the suit of 'one who has no legal title or right.' No 71.

And therefore, in the present case, it will not support the objection in favour of the crown, to say, that if the claimant's right is set aside, the right of the original wadsetter will be prescribed, or that it will be cut off by the vesting act, for default of entering a claim. This argument will no more entitle the crown to plead in the right of a third party, than the prescription which would have been run against Helen Trotter's right, was found to support the Earl of Home's plea against Jacobina Clark.

'THE LORDS sustained the claim upon the claimant's producing a disposition in his favour from the heirs of the original wadsetter.'

For the Claimant, *Johnston.* Alt. Crown-lawyers. Clerk, *Justice.*

W. J. *Fac. Col. No 157. p. 279.*

1759. *March* 8.

SCHAW MACINTOSH of Borlum *against* WILLIAM and ANGUS MACINTOSHES.

No 72.
A condition in a bond of reversion, requiring the redemption to be made with the proper money and means of the reverser, found not effectual to bar redemption.

IN the year 1734, Schaw Macintosh of Borlum, for the sum of 44,000 merks, executed a disposition of his lands of Borlum, in favour of William and Angus Macintoshes; who, of the same date, granted him a bond of reversion, declaring, that the lands should be redeemable at the end of 25 years, but under certain restrictions. The clause of reversion was expressed in these words: 'In 'case the said Schaw Macintosh, or any heir-male to be lawfully procreated of 'his body, (secluding hereby expressly all other heirs, whether male, of line, 'tailzie, or provision, whether legal or conventional, and debarring them from 'any right or title hereto, being an express condition of granting hereof), can 'and shall (with the proper money and means of him the said Schaw Macin-'tosh, or of an heir-male lawfully to be procreated of his body, to be made up 'and acquired by them, or either of them, without contracting of debt, and 'without raising the same on any rights or securities on the other lands herit-'ably belonging to him the said Schaw Macintosh), consent and pay to us, or 'our foresaids, the sum of 44,000 merks, as the price and purchase-money paid 'by us, and that at the term of Whitsunday 1759; then, and in that case, 'we, or our foresaids, shall accept and receive the said hail sum, and shall fully 'and amply denude ourselves of, and convey and redispone to the said Schaw 'Macintosh, and the said heirs male of his body, the foresaid lands.'

Shaw Macintosh, some months preceding the term of Whitsunday 1759, brought a declarator of redemption against William and Angus Macintoshes, in order that it might be found, that he was entitled to redeem the lands, and that his process of declarator might be held as a sufficient premonition for that purpose.

No. 72.

The defenders *insisted*, 1*mo*, That the pursuer had no title to redeem the lands; for that he was not possessed of funds of his own to pay the price, but was assisted by other persons, who meant to purchase the lands from him so soon as they were redeemed; 2*do*, That the disposition to the lands in their favour was granted for a full and adequate price; That the reversion was no part of the original bargain, but was a gratuitous concession in favour of the pursuer, of whose family they were descended; and the intention of it was, that if his circumstances, or those of the heir-male of his body, should enable them to purchase back the lands at the end of 25 years, the purchasers were willing to give them up; but it was not the intention of parties to allow the seller the benefit of this redemption, when he was not in condition to keep the lands, but only intended, after the redemption, to sell them again at a higher price.

Answered, The pursuer has no occasion to explain, whether he intends to redeem the lands with money of his own, or with money which he has borrowed; because, though the bond of reversion makes a distinction of this sort, yet it is a distinction to which the law gives no support; for it is altogether *jus tertii* to the defenders, whether the money paid to them is borrowed by the pursuer or not. This point was expressly decided 16th July 1696, Bargeny against Ferguson, *voce* REDEMPTION. 'It being provided in a reversion, that the lands should be redeemable only with the reverser's own money; and yet the money, when offered, was borrowed from another; the LORDS found no specialty nor restriction laid on the debtor in this case, but that he might redeem the creditor with any money, *cui nihil deerat cum suum recipit*, unless it had been more clearly contained and provided for.'

If any effect were to be given to such clauses, a pretext would be afforded to disappoint every reversion. A debtor is obliged to submit almost to any terms which his creditor insists upon; and at the time such reversions are granted, the debtor often flatters himself, that he will be able to make the redemption by money of his own; but it would be hard to exclude him from the benefit of the reversion, though he should be disappointed of this expectation. It is difficult to ascertain the free amount of any man's fortune; and his right to take the benefit of a reversion ought not to depend upon such an enquiry.

2*do*, The wadsetters in this case had a sufficient return for their money, by the possession of the lands, and by a sale which they were allowed to make of a considerable wood; and therefore this was not a sale, but a lucrative wadset; and the clause of reversion ought, on that account, to be favourably interpreted for the reverser.

"THE LORDS found, That the pursuer was entitled to redeem the lands libelled; and that this process was a sufficient premonition for that purpose."

Reporter, *Bankton.* Act. *Johnstone, Ferguson.* Alt. *Hamilton-Gordon, Lockhart.*

W. J. *Fol. Dic. v. 3. p. 367. Fac. Col. No. 182. p. 324.*