is adjudged; adhered to the interlocutor,—repelling the objections to the pursuer's title; and also adhered to the second point of the interlocutor,—finding the order of redemption used sufficient for entitling the pursuer to insist in the redemption.

Fergusson, the wadsetter, reclaimed; and the only thing material which he offered, respected the pursuer's title to redeem. As to this, he pleaded that the adjudication was null, there being no evidence of its having proceeded upon a special charge; for, although the decreet bears production of such charge as libelled, yet the libel neither mentions its date, tenor, nor contents; and, further, that the bill for adjudication is still blank as to the lands. The defender has right to move the objection as well as the heir or the creditors of William Grierson would have had. A wadsetter is entitled to retain possession of the lands wadsetted, until they be regularly redeemed by the person having right to the reversion. Of consequence, he may object to the title of any one pretending to redeem. In like manner, when a reversion is to heirs-male, he may object to redemption used by heirs-of-line; or, if the right of reversion is assigned, he may challenge the title of the assignee: although, in the one case, the heirs-male should move no objection, nor, in the other, the disponer. It is, therefore, equally competent for the wadsetter to object against an adjudication in implement, although no objection be moved by the heir, or by the creditors of the person in implement of whose disposition such adjudication was led.

On the 9th August 1766, the Lords adhered.

*Petitioner*, A. Wight.

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1766. *November* 14. Alexander Keith, late Provost of Aberbrothock, *against* James Meikeson and John Shank.

### JURISDICTION.

An appeal having been entered before the Circuit Court of Justiciary, under the 20th of Geo. II., found not competent for the Court of Session to review their judgment in a Suspension, although the judgment was in absence.

Alexander Keith insisted in an action before the bailies of Aberbrothock against James Meikeson, for payment of L.7 : 9 : 7 sterling.

The bailies pronounced decreet against Meikeson for the sum libelled, with one shilling in the pound of expenses.

Meikeson appealed to the Circuit Court at Perth, in terms of the statute 20th Geo. II., and John Shank became his cautioner.

He failed to insist in his appeal.

The Lords of Justiciary at the Circuit Court admitted protestation in common form; allowed the decreet of the bailies to be put in execution, and decerned for L.1 : 19 : 6 sterling in full of expenses. They also ordained execution to pass.

Upon this judgment, and upon the decreet of the bailies, Keith charged Meikeson and Shank his cautioner.

They suspended. Meikeson pleaded that most of the sum decerned for by the bailies was already paid. He also pleaded compensation upon an open account of L.8 sterling; and they offered to liquidate both defences, by referring them simply to the oath of Keith.

Keith OBJECTED, That the decision of the Circuit Court is final, by the Act 20th Geo. II., which provides, "That it shall be lawful for the party conceiving himself aggrieved by the sentence of the inferior court, to take and enter in open court, at the time of pronouncing such decree, judgment, or sentence, or at any time thereafter within ten days, by lodging the same in the hands of the clerk of court, and serving the adverse party with a duplicate thereof personally, or at his dwelling-house, or his procurator or agent in the case; and serving in like manner the inferior judge himself, in case the appeal shall contain any conclusion against him by way of censure or reparation of damages, for alleged wilful injustice, oppression, or other malversation; and such service shall be sufficient summons to oblige the respondent to attend and answer at the next circuit court that shall happen to be held fifteen days at least after such service; and thereupon the judge or judges, at such circuit court, shall and may proceed to cognosce, hear, and determine any such appeal or complaint by the like rules of law and justice as the Court of Session, or Court of Justiciary, respectively may now cognosce and determine, in suspension of interlocutors, decrees, sentences, or judgments of such inferior courts: but the said circuit court shall proceed therein in a summary way: And, in case they shall find the reasons of any such appeal not to be relevant, or not instructed, or shall determine against the party so complaining or appealing, the said judge or judges shall condemn the appellant or complainer in such costs as the court shall think proper to be paid to the other party, not exceeding the real costs *bona fide* expended by such party; and the decree, sentence, or judgment of such Circuit Court, in any of the cases aforesaid, shall be final."

"Provided always that wherever such appeal shall be brought, such complainer, at the same time he enters his appeal, as aforesaid, shall lodge, in the hands of the clerk of Court, from which the appeal is taken, a bond, with a sufficient cautioner for answering and abiding by the judgment of the Circuit Court, and for paying the costs, if any shall be by that Court awarded: And the clerk of Court shall be answerable for the sufficiency of the cautioner."

It was ANSWERED for the SUSPENDERS,—That the protestation admitted, and the judgment given, were in absence; whereas the Act founded on relates to *causes heard*, not to decreets in absence.

REPLIED for the CHARGER,—The Act says nothing of *causes heard*. Here the procedure was the same in form as before the Court of Session, but different in its consequences. Before the Court of Session the suspenders might have been reponed against such protestation, but not before the Circuit Court, whose judgment is final by the statute.

The reason of the difference is obvious: decreets in absence may chance to be pronounced before the Court of Session in the greatest causes, where, as decreet cannot be pronounced before the Circuit Court in causes beyond the extent of L.12 sterling; were such judgments to be suspended, that very expense would be incurred which the statute proposed to prevent.

By entering an appeal the appellant makes choice of a jurisdiction. The service of appeal obliges the respondent to answer. The appellant also is obliged to find caution *to answer and abide by the judgment.*

Were the respondent to allow decreet-absolvitor, he could not apply for suspension, and the same must be the rule as to the appellant.

On the 14th November 1766, on report of Lord Hailes, Ordinary on the Bills, the Lords found the letters orderly proceeded.

## OPINIONS.

Barjarg. The statute 20th Geo. II. meant to prevent suspensions of this nature.

Pitfour. When the *cause is heard and determined,* the judgment of the Circuit Court is final, by the statute; but this relates not to judgments in absence, where the merits of the cause are not determined. In this there is no inconveniency, for, if parties tergiverse, expenses may be awarded.

President. The suspension is not competent. There was no occasion for a protestation. By the statute a new jurisdiction was introduced, and a cautioner to *abide by the judgment* was required. It is like an appeal to the House of Peers. The Court of Justiciary must hear the cause, and, if the appellant do not insist, must give costs. The thing under suspension is the decreet of the Court of Justiciary. That is final, and cannot be reviewed by the Court of Session. If the Circuit Court shall determine against the appellant, and give costs, how can that determination be suspended? The original plan of the law was to bring every cause from the inferior court to the Circuit. This was afterwards altered, and the limitation of L.12 was introduced. But still it was understood that, if the party made his election of the Circuit Court, he could not go to any other.

Kaimes. An appeal dismissed *ob contumaciam* is not final. Suppose a man struck with palsy, and thereby disabled from attending, could not he suspend? The question is, was the party in fault or not?

Auchinleck. This is a new question, and upon a new law. The party might either appeal or suspend, but whichever method he followed, to that he must adhere; and the respondent had a title to pray the judgment of the Circuit Court. If there was any thing fraudulent on the part of the respondent, reparation lies by an action for damages.

Justice-Clerk. The decreet of the Circuit Court cannot be suspended. Protestation is a technical term adopted from the Court of Session. But still it is a decreet of the Circuit Court. It is like a judgment pronounced by the House of Peers in absence. If there has been any fraud, it may still be corrected, possibly by reduction, certainly not by a suspension.