

S E C T. II.

Reversions.—Eiks to Reversions.—Reserved Faculty to Burden in a
Disposition of Lands.—Arrears of Interest of an heritable Debt.

1565. December 18. HOME *against* HOME.

No 14.
One who had right to a reversion borrowed more money from the wadsetter, and granted an obligation, that the reversion should not be used by him, his heirs or assignees, till that sum were paid.
An assignee having used the order, the Lords had no respect to the second obligation.

ANENT the action pursued by Alexander Home, as assignee to the Earl Bothwell, to redeem certain lands of Prendergast from William Home of Lochtille, liferenter of the said lands, and Alexander Home, fiar of the same, and his mother and tutors for their interest, it was *alleged* by the said Alexander, That the persons defenders foresaid should be compelled, by decret of the Lords, to resign, renounce, and overgive the said lands to the said pursuer, because he caused lawfully warn the said defenders to receive a certain sum of money, contained in a reversion made by the said William Home to the said Earl Bothwell's father, to whose son and heir the said pursuer was assignee, and caused number the said money at the place affixed in the said reversion, and fulfilled the same in all points; and because the said defenders came not to receive the said money, and fulfil their part of the said reversion, lawful time and day, the said pursuer consigned the said money contained in the reversion, in the hands of——, conform to the same.—It was *alleged* by the defenders, That by no way they should be compelled to resign and overgive the said lands, nor grant the same lawfully redeemed; because, since the making of the said reversion, the said Earl Bothwell, maker of the said assignee, long before the making of the same, had received a sum of money from the said fiar of the lands, and thereupon had given him an obligation, binding and obliging him, his heirs and assignees, that it should not be leisome to him nor them to redeem the said lands frae the said fiar nor his heirs, by virtue of the said reversion, until the said sum, contained in the obligation, was first paid, which was not done as yet.—It was *alleged* by the said pursuer, That he knew nothing of the said obligation, nor it was never intimated nor shewn to him at no time, and specially at the time of the redemption; and therefore, *bona fide* he used all things contained in the said reversion, therefore the said lands should be decerned redeemed lawfully; which allegiance of the said pursuer was admitted, and the lands decerned lawfully redeemed; notwithstanding the allegiance of the defender, which was repelled.

Eol. Dic. v. 2. p. 63. Maitland, MS. p. 163.