

REDEMPTION.

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tion at the bar, and that also there was a procuratory produced, lawfully subscribed before the requisition making; yet because it was not shewn at the very time when requisition was made, it was not sustained; albeit it was not alleged, that the debtor, when he was required, desired to see the procuratory, but only because the requisition bore not that the requirer offered to shew his procuratory, or that he shewed the same.

No 17.

Act. *Hope et Nicolson.*

Alt. ———.

*Fol. Dic. v. 2. p. 322. Durie, p. 34.*

1623. November 26. LA. of DRUM against WISHART.

THE LORDS found consignation of the money lawful, being made in the hands of the consigner's servant; and notwithstanding it was opposed, that the money was used since the consignation, viz. lent to consign in favours of another, in respect the party consigner was responsible, and that they had done diligence to obtain declaration, and offered the money at the bar.

No 18.

*Kerse, MS. fol. 84.*

\*\*\* Haddington reports this case:

IN the reversion pursued by the Laird of Drum against the Heirs of Captain Wishart, he having consigned the money into the hands of a servant of his own, it was *alleged*, That the redemption could not be lawful, unless he paid annualrent for the money since the term of Whitsunday last; because, in effect, he had retained the money in his own hands, and made use of it; whilk was no otherwise qualified, but, at Martinmas last, he had lent a part of the same to a merchant to offer in a redemption, whilk he retired within half an hour, and had it ready at the bar to deliver to the party; and the consignation being made in his servant's hand, it was after the refusal of the Treasurer and Dean of Guild to receive it. In respect whereof, the LORDS sustained the order of redemption, and declared him free of any annualrent.

*Haddington, MS. No 2932.*

1625. July 2. DR. KINGAID against HALIBURTON.

FOUND, in redemptions of comprised lands, that the compriser's meddling with the farms and duties of the lands beyond the annualrent, *ad hunc effectum* to diminish the principal sum heritable, by way of reply, without declarator.

No 19.

No 19.

WHEN it is alleged, that the compriser meddled with a part, and might have meddled with the hail, the LORDS found it not relevant, in respect of the act of Parliament, which binds not the compriser with intromission, but if he pleases, and the same found relevant, it was offered to be proved, that he meddled with more than would pay his annualrent, and so ought to have meddled with the hail, not being impeded.

*Kerse, MS. fol. 84.*

\*.\* Durie's report of this case is No 1. p. 314., *vide* ADJUDICATION.

1626. December 13. E. BUCCLEUCH *against* YOUNG.

No 20.  
Dwelling  
place must be  
specially  
mentioned.

IN an action of redemption at the instance of the Earl of Buccleuch against \_\_\_\_\_ Young, the LORDS found the instrument of premonition made to the defender to be null, because it bore him to be warned at his dwelling-place, and made no mention of the special dwelling-place whereat he was warned, nor designed the same in the instrument; but only bore, that he was warned at his dwelling-place indefinitely; and this was so found, albeit the date of the instrument bore two special places therein mentioned, designed in the inscription thereof, viz. in this manner, at Trockness, and \_\_\_\_\_, such a day and year; and the instrument purported, that he was warned indefinitely at his dwelling-place, not declaring which of the foresaid two places dated in the instrument, nor yet bearing, at his dwelling-place foresaid, nor there.

Act. Scot.

Alt. \_\_\_\_\_

Clerk, Scot.

*Fol. Dic. v. 2, p. 322. Durie, p. 244.*

1628. February 7. MAXWELL *against* L. INNERWEEK.

No 21.  
Place of pay-  
ment must be  
pointed out.

IN an action betwixt James Maxwell and L. Innerweek, for declaring of a reversion of lands to be expired, upon a clause irritant, conform to the contract betwixt the parties, seeing conform thereto the defender being required to provide and pay the moneys, as was appointed in the contract, he had not done the same, the LORDS assoilzied from this declarator, in respect the requisition made to pay the moneys was made by a procurator constituted by the pursuer, who required payment to be made to James Maxwell, at a term at which he was not within the country, and the defender was not obliged to pay the same out of the country; and albeit the procurator had power to receive the money, yet seeing he required not the payment to be made to himself, as having power, but to the constituent's self, who was absent as said is; and also in respect that the procurator designed no place, where he desired the defender to