

No 34.

1600¹ December 17.BENNET *against* BENNET.

ASSIGNATIONS to the order of redemption need not be registered.

*Auchinleck, MS. p. 183.*1634. July 12. Lo. BALMERINOGH *against* Lo. JEDBURGH and ELLIOT.

No 35.

Whether a renunciation must be offered to the wadsetter to be subscribed by him.

THE Lo. Balmerinoch having comprised certain lands from the Lo. Jedburgh, and using the order of redemption, and seeking declarator thereon against Gilbert Elliot, who had a preceding wadset of these lands; and the defender quarrelling the order, because at the term, to which the redemption was used, he was ready and compeared with his procurator and offered a renunciation, and was content to receive the money, so that the pursuer was in default himself, who would not deliver the money and receive the renunciation; and where the pursuer replied, that the renunciation offered by the defender was not sufficient, so that he could not accept the same; he *duplicated*, That the pursuer ought to have presented another renunciation to the defender, such as he desired to have been perfected to the pursuer, which the defender was ready to have subscribed, and to have then received his money; which the pursuer not doing, *per ipsum stetit* that the redemption took not effect, and consequently the order cannot be found lawful; for he ought to have formed his own security, which if the defender had refused to subscribe (being lawful) then the defender might justly have been found to be *in mora*, but this not being so done, this order cannot be sustained. This allegiance was repelled, and the order sustained; for the defender's renunciation offered by him was not sufficient, neither was it found necessary that the pursuer should have at the time of the order, and at the term of redemption, offered such a renunciation to the defender, as he would have had to be subscribed by him. *Item*, In this same process, the defender having also an infestment of annualrent out of the same lands, by and attour the said wadset; which annualrent was redeemable by payment of the principal sum, eight days after any term of Whitsunday or Martinmas, upon the premonition of forty days preceding; and the pursuer having used the order for redemption of the same against that term, whereto the wadset was craved to be redeemed, and not to the eight day after the term, as the reversion bore; this order concerning the annualrent was not sustained, seeing the defender was not warned to come and receive his money at the eight days after the term; albeit the pursuer *replied*, That that clause was conceived in the redeemer's favours, and seeing he had done more than he needed, by warning him, and making his money precisely ready at the term, that that clause, which was conceived in his favour, should not be converted to his pre-

REDEMPTION.

1340.

judice; especially where thereby the defender has no prejudice, seeing also he compared at the term to which he was warned, and thereby cannot be excused by ignorance; which reply was repelled, and therefore the order was not sustained for redemption of the annual rent.

No 35.

Act. *Stuart & Lermontb.*

Alt. *Nicolson & Scot.*

Clerk, *Hay.*

Fol. Dic. v. 2. p. 324. Durie p. 725.

1635. February 21.

L. EARLSTON against L. GRIMMET.

In a redemption, the LORDS sustained the order of redemption, albeit the instrument of premonition made no mention that the procurator, who made the same, did show his procuratory and warrant to premonish, and also, albeit the instrument of consignation made no mention therein, neither of the production of the procuratory, nor yet of the production or shewing of the reversion, by virtue whereof the redemption was used, without which had been both produced, and also the instrument of premonition and consignation had made mention expressly, that the same were shown, as the defender alleged to be necessary in all orders of redemption, he alleged the order could not be sustained, but absolvitor ought to be granted therefrom; which allegiance was repelled and the order sustained; but declared, that they would not draw this hereafter in a preparative, in respect the pursuer had sustained great trouble in actions for recovery of the said reversion from the same defender.

No 36.

An order of redemption was sustained, although the instrument of premonition made no mention of the procuratory.

Act. *Mowat.*

Alt. *Nicolson.*

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 322. Durie, p. 757.

1635. March 20.

Bishop of GLASGOW against MAULD.

In a declarator of redemption, pursued at the instance of the Bishop of Glasgow, against Robert Mauld, for a room in Doune, it was *alleged* by the defender, That David Earl of Crawford, to whom the reversion was first granted had discharged, at least past, from the said reversion, in so far as by his confirmation he had received the defender's father his vassal of the said lands, without any reservation of the said reversion, and so has prejudged himself, as superiors do when they confirm a charter made by the vassal to another person of a different holding from the first. To which it was *answered*, That the receiving a vassal in place of another, does not prejudice the superior of his right of reversion, except the same were discharged expressly. THE LORDS repelled the allegiance in respect of the reply.

No 37.

Auchinleck, MS. p. 183.

* * Durie's report of this case is No 74. p. 6516, *voce* IMPLIED DISCHARGE and RENUNCIATION.