

No 43.

1665. *January 19.*STEWART *against* STEWART.

AN infeftment of annualrent was found loosed, so as to go to executors upon a requisition by the creditor, though the procuratory was not produced at the time of the requisition, the same not having been called for, and the defunct having homologated the order, by raising horning upon it.

Fol. Dic. v. 2. p. 322. Stair. Newbyth.

* * * This case is No 136. p. 5587, *voce* HERITABLE and MOVEABLE.

1667. *January 2.*JAMES HOGE in Edinburgh *against* JAMES HOGE in Dalkeith.

No 44.
Redemption sustained upon consignation of a liquid debt due by the wadsetter to the reverser.

JAMES HOGE in Edinburgh pursues a declarator of redemption against James Hoge in Dalkeith, who *alleged* absolvitor, because the whole sum contained in the reversion was not consigned. It was *answered*, There was consigned the equivalent, viz. a decret against the defender for a liquid sum which behoved to compensate. It was *answered*, That reversions being *strictissimi juris*, compensations are not to be admitted therein; otherwise wadsetters may be much prejudged by taking assignations from their creditors, and consigning the same and frustrating them of their monies which they had designed for other creditors and other uses. It was *answered*, That this was no extrinsic compensation, but a decret founded upon an article contained in the contract of wadset;

Upon which consideration the LORDS sustained the order and declared.

Fol. Dic. v. 2. p. 325. Stair, v. 1. p. 419.

* * * Newbyth reports this case :

1667. *January 12.*—JAMES HOGE in Dalkeith having, *in anno* 1653, given a proper wadset of his house in Edinburgh, to James Hoge in Edinburgh, under reversion of 3000 merks; the said James Hoge in Edinburgh, by the said contract of wadset, is obliged to pay to the said Hoge in Dalkeith L. 100 yearly, in regard the rent of his house was better than the annualrent of 3000 merks; and in regard the said James Hoge in Edinburgh made no payment of the said L. 100 yearly from the date of the contract to Whitsunday 1663; therefore the said James Hoge in Dalkeith obtained decret against him for payment thereof; and at Whitsunday last pursues an order of redemption against the said James Hoge in Edinburgh, and consigns the foresaid decret and discharge thereof, with the superplus of the money that remained unpaid of the 3000 merks; and now pursues a declarator for the order of redemption.