

SURROGATUM.

1623. March 14. SKEEN *against* FORBES.

No. 1.

If a wadset tenement, wherein the relict was infest, is redeemed, she must be provided to the annual-rent of the sum in the reversion.

Fol. Dic. v. 2. p. 412.

* * This case is No. 1. p. 3047. *voce* CONQUEST.

1661. June 29. TELFER *against* MAXTON.

No. 2.

An order of redemption having been used, and the wadset sum consigned, after the wadsetter's life-rent-escheat was fallen, it was found incumbent upon the wadsetter, who had right to this sum, as coming in place of the wadset, to employ the same, or give security to the donatar of his life-rent-escheat for the annual-rent thereof during the wadsetter's lifetime.

Fol. Dic. v. 2. p. 412.

* * This case is No. 18. p. 5631. *voce* HOMOLOGATION.

1665. July. WEDDERBURN *against* M'PHERSON.

No. 3.
Factum im-
prestabile.

Dougal M'Pherson having sold the lands of Easter Pourie to Alexander Wedderburn of Kingheny, he is obliged to cause his wife subscribe the disposition, and ratify judicially, she being infest in an annual-rent of the principal sum of 8,000 merks; whereupon Dougal being charged, suspends upon this reason, That he had dealt with his wife to subscribe and renounce, but she has refused, and so it is *factum imprestabile*, and the suspender is content to do the equivalent; viz. to suffer the like sum of 8,000 merks owing by the charger to the suspender, to lie in his hands for his security, till either his wife renounce, or she depart this life. To which it was answered, That the suspender being obliged particularly to cause his

No. 3.

wife renounce, which is a thing prestable in its own nature, and which his wife may fulfil if she will, and if she will not, *sibi imputet*, who might have advised with his wife before he came obliged, and therefore now he ought to fulfil his bond *in forma specifica*; and as to the sum owing by the charger, the suspender stands infest in the same lands therefore, so that the land is burdened both with that infestment and the wife's also, which sum he is content to pay for purging of both infestments, the charger being unwilling to have his lands thus burdened.

The Lords found the letters orderly proceeded, the charger being ready to make forthcoming the money.

Gilmour, p. 111.

1669. June 9. WILLIAM STREET *against* HUME and BRUNTFIELD.

No. 4.

A mandatar having sold his constituent's goods, took bond for them in his own name.

The constituent was found to have direct action against the purchaser, by way of declarator to pay the sum to him.

William Street, Merchant at London, having sent down a parcel of skins to Arthur Lyall, his factor at Edinburgh, Lyall sells the skins to Hume and Bruntfield, and takes the bond for the price thereof, in his own name, payable to himself, without mention of Street. Lyall being dead bankrupt, and Street finding that if he should confirm the value of the skins as executor creditor to Lyall, the rest of Lyall's creditors would come in with him, and share in this sum which was the price of his skins, therefore he raised a declarator against the nearest of kin of Lyall, that the sum due by Bruntfield and Hume, albeit the bond was taken in the name of Lyall, yet the same was for Street's goods and to Street's behoof; and none compearing, he obtains decret of declarator to that effect. And now he pursues Bruntfield and Hume for payment of the sum; who alleged they cannot be *in tuto* to pay to any but those who represent Lyall, to whom they were debtors, and therefore the pursuer must first confirm as executor to Lyall; and as for the declarator obtained, it was in absence, and they not called, and whenever the executors confirms, they cannot exclude them. The pursuer answered, That he needed not confirm as executor to Lyall, because this debt, albeit in the name of Lyall, yet was not *in bonis* of Lyall in so far as it was the price of the pursuer's skins, which were in the custody and management of Lyall, but never his property; but specially, by Lyall's missive produced, he acknowledges the receipt of the skins, and that he had sold them to these defenders; that he was to take bond for them, which is the same bond; and in his count-book produced, he states himself only debtor to Street for £.10 Sterling that he had reserved of his bond, and not for the whole sum, which therefore must import that the remainder remained Street's; and yet for the further assurance of the defenders, he offered caution to warrant them. The defenders answered, That the pursuer having entrusted Lyall with the skins, he had followed Lyall's faith, and could not quarrel what Lyall had done with any third party, so that Lyall taking the bond in his own name did alter the condition of the affair, and stated himself debtor to Street, and the mer-