

unless it had been expressed : As to the exception in the act it is not an exception general to the whole act, but to the antecedent part of the act ; and this clause, anent restricting of wadsets, posterior to the exception, and not derogated thereby.

No. 11.

The Lords repelled the defence, in respect of the reply, and found the exception not to derogate to the posterior clause concerning wadsets.

Stair, v. 1. p. 88.

1665. January 10. CAMPBELL against MARY BRYSON.

George Campbell having right by adjudication to the reversion of a wadset, of some of the lands of Newliston, wadset by the Laird of Newliston, to Andrew Bryson, Bailie of Edinburgh, whereupon he was publicly infeft ; and thereafter did dispone the same to his daughter Mary Bryson, and she was infeft, holden of her father ; which disposition contained a power to the father, to dispone on the sum in the wadset right, during his life-time, without her consent ; after all, Andrew Bryson obtained a confirmation of the foresaid wadset, with addition of 16 acres of land more for the same sum, which was conceived in favours of himself and the heirs of the marriage, whereupon he was infeft. The said George having used an order of redemption, craved declarator. Compearance is made for the said Mary, who craved the said sum to be delivered up to her. It was alleged by the pursuer, that she could not have up the sum, unless she were infeft as heir to her father, both in the first and last wadset, and resigned the same ; and so liberated the land of the burden thereof ; for albeit she was infeft *proprio nomine*, yet it was but base holden of her father ; so that the superiority remained with her father, and she behoved to be infeft as heir to him, and renounce the same ; *2dly*, The corroborative wadset stood in her father's person, who by her disposition had a power to dispose of the first wadset, and so had altered the fee thereof to himself and his heirs. It was answered, That the second wadset was taken when Mary's mother was dead, and she the only child of that marriage, and so was alike as if her name had been expressed ; *2dly*, The declarator itself will sufficiently secure the redeemer, albeit there was no resignation ; *3dly*, The second wadset is but accessory to the first, so that the said Mary, having power to renounce the first wadset *proprio nomine*, the second may be declared to be extinct in consequence ; and further, offered caution, if need were, to warrant the redeemer.

No. 12.
Form of re-
investing the
reverser upon
redemption.

The Lords found the lands to be redeemed, but ordained the money not to be given up, until the said Mary had infeft herself, as heir to her father, and resigned, for they thought the redeemer ought to be put upon no hazard of repetition, or of the danger of the infestment unrenounced, seeing it was the ordinary course to be infeft, and to renounce.

Stair, v. 1. p. 247.