

No 74. session; and that the allegiance is not relevant, except it were likewise alleged that the said Andrew Ker was in possession by a deed of the pursuers. To which it was *replied* for the defenders, That the pursuer being a compriser, can be in no better case than his author, from whom he comprised; and if Sir George Ramsay, or his heirs, were pursuing for the same, whereupon the wadset was redeemable, they could not get payment of the same while they repossess the defenders in the wadset lands, whereof Sir George was in possession; and there is no necessity to allege that the said Andrew Ker is in possession, and that they cannot now get possession; so that except the pursuers will offer to prove that the pursuer or the said Sir George was legally dispossessed by the said Andrew, by virtue of a sentence, upon a better right, the allegiance proponed by the defender stands relevant. This being a singular case, the LORDS found no process for payment of the 5000 merks, unless the compriser, Torsonce, pursuer of this action, did not only renounce the wadset in favour of the defender, but also repossess him.

*Newbyth, MS. p. 26.*

1666. June 15. GEORGE TAYLOR *against* JAMES KNITER.

No 75.

GEORGE TAYLOR having appraised some land in Perth, set a tack of a part of it to James Kniter, who thereafter appraised the same. Taylor now pursues a removing against Kniter, who *alleged* absolutor, because he had appraised the tenement within year and day of the pursuer, and so had conjunct right with him. It was *answered*, That he could not invert his master's possession, having taken tack from him. The defender *answered*, It was no inversion, seeing the pursuer, by act of Parliament, had right to a part, but not to the whole; and the defender did not take assignation to any new debt, but to an old debt, due to his father.

THE LORDS sustained the defence, he offering the expenses of the composition and appraising, to the first appriser, conform to the act of Parliament.

*Fol. Dic. v. 1. p. 599. Stair, v. 1. p. 377.*

1676. February 2.

DUKE OF LAUDERDALE *against* The LORD and LADY YESTER.

No 76.

A declarator of redemption craving the defender to renounce all right he had to certain lands, in any

THE Duke of Lauderdale having obtained a decret of declarator of redemption of his estate, disposed to his daughter, the Lady Yester, redeemable by a rose-noble; and having charged the Lord and Lady Yester to renounce, and given in a draught of the renunciation as his special charge; it was *objected* by the Lord and Lady Yester, That, by the draught, they were to renounce all