

1671. June 16. LORD LOVAT *against* LORD M'DONALD.

No. 20.

Formalities of the offer of security for the annual-rent of the wadset sum.

The Lord Lovat having intented action against M'Donald, upon the act of Parliament anent debtor and creditor, for payment of the superplus of a wadset, granted of a part of Lovat's lands, for the sum of 5000 merks, which they alleged were worth 2000 merks of yearly rent, and that since the year 1662, in respect that M'Donald was required, and instruments taken, to accept of security for payment of his annual-rent. It was alleged, That the requisition was only at the defender's dwelling-house, he himself being out of the country, and that letters of supplement ought to have been raised, and intimation made upon 60 days; *2do*, A simple requisition was not sufficient, and the defender could only be liable from the date of the summons raised thereupon, which was not until five years thereafter. It was replied, That the act of Parliament did not ordain requisitions to be made of that kind, but in respect of the exorbitancy of the wadset, it was sufficient to require at the dwelling-house, and that thereupon summons being raised *quocunq; tempore*, the defender was liable for the superplus rents after the requisition. The Lords did not sustain the requisition, the defender proving that he was out of the country, which being proved, they did find him only liable from the date of the citation before the Lords; but he failing to prove, or admitting to the pursuer's probation, that he was in the country, they proving the same, they found him liable from the date of the requisition. But in respect the instrument of requisition was quarrelled upon that ground, that there was neither a procuratory given nor produced, the Lords did ordain, that the procuratory should be produced, and that the notary should declare, that he knew the verity thereof, and that it was good and sufficient; as likewise that the security afforded should be condescended on and produced, and found to be such as the wadsetter could not refuse, otherwise they declared that they would not sustain the requisition.

Gosford MS. No. 352. p. 170.

1673. January 7. KENNEDY *against* HAMILTON.

No. 21.

What requisite to vest a wadset-right?

John Weir having granted a wadset of the lands of Cumberhead, John Weir, his son, did redeem the same, and took on a new wadset, and the wadsetter possessed, and by progress came to Kennedy of Auchtifardel, who took a new right from John Weir, the oye, as heir served to John Weir, his goodsire, and Hamilton, younger, of Raploch, purchased a right to the reversion by progress from John Weir, younger. Auchtifardel upon his right pursues reduction and improbation against Raploch, upon this reason, that any right he had was *a non habente potestatem*, John Weir the son never being infeft, and insisting for certification *contra non*