

To which it was ANSWERED, *1mo*,—That all he would be liable in would only be a proportional part, and that effeiring to his sum, there being no posterior apprisers beside him. This was sustained.

Then *2do*, He could pay no part of the said charges, because he offered him to prove, that John Lauder, the first appriser, had intromitted with more of the farms of thir lañds since his apprising than the said expense would amount to, and so he could crave none of it from him.

REPLIED,—It is true he has intromitted with more than that expense would come to; but it is as true that any intromission had by him must be *primario* ascribed and imputed in payment of his annualrent, and then (*quod creditor percipit imputat in usuras, et post in sortem, per L.L. a Cujacio citatas in Titulo Cod. In quibus causis pignus tacite contrah.*) *2do tantum loco* for the expenses of his apprising; now all his possession will not pay the half of his annualrents due by virtue of his apprising.

My Lord Advocate, notwithstanding all the pains we took on him, found that the first appriser's intromission with the duties of the appraised lands must be *ante omnia* ascribed in payment to him of the expenses wared out in deducing and leading his apprising, (which expenses are *sors durior* and so must first be presumed paid,) and then next for payment of the annualrents. *Vide supra*, No. 118, [*Tailfer, January 31, 1671.*] and *infra*, No. 340, [*Home against Preston, June 15, 1672.*]

*Advocates' MS. No. 334, folio 133.*

1672. *February.*

ANENT WADSETS AND REVERSIONS.

IN using an order for reduction of a wadset, the order will apparently be null, if the user produce not the reversion; neither will a copy satisfy; and if he be not the person to whom the same was granted, then *de necessitate* he must also produce the right he has thereto, whether it be by assignation, comprising, adjudication, as heir retoured to the receiver of the reversion, or otherwise; only, if a man *ex titulo singulari, videlicet* by a comprising or the like, come to have right to a reversion, it seems hard in that case to force such a redeemer at his order to produce the principal contract of wadset or the principal reversion, seeing it is in his debtor's hands, and he cannot get it; only he should premonish the wadsetter to bring his reversion with him and exhibit it. See *Hope, tit. 10. of Wadsets and Reversions, folio mihi 73.* Yet others think no order can be sustained without production of the reversion, and, therefore, even a singular successor, ere he come to use an order, should recover the principal reversion by an exhibition. And Hadington seems to say no less; *19th January 1610, John Reull against Mr. William Brown: Parliament 1469, act 27.* Yet see *Dury, 28th June 1628. L. Newark; 21st February 1635, Earleston:* and see the same in *Balmanno, verbo Redemptions, p. 266.* See this same decision in the other collection I have beside me of that year 1610.