

positions of witnesses taken *ex officio*; it was found, by plurality of votes, that the defender's right of the lands of Gilmerton was irredeemable; and, therefore, assoilyied from the declarator, as founded upon the reversion granted by Mr James Cockburn to the Laird of Wauchton: as likewise, as founded upon the back-bond and declaration granted by the said Francis to Mr John, and upon the missive letter directed by Mr James Anderson to the Laird of Wauchton, bearing the *formula* of a reversion, to be subscribed by the said Francis, before the irredeemable right should be subscribed and delivered. Which decret was very hard, and against the votes of several of the Lords, whereof I myself was one.

1st. That an irredeemable right and disposition being effected, with a reversion by a back-bond, did burden the lands, not only as to the first wadsetter, but likewise as to all singular successors; who did not only acknowledge that the said lands were under reversion, but likewise did oblige themselves to warrant against the first granter of the wadset; so that he could not but know of the real right of the reversion.

2d. Albeit Wauchton did subscribe any irredeemable right to Francis, yet it being clear that the same was only sent to him by his own servant, that albeit it was subscribed, it should not be delivered but upon a formal reversion, to be granted by Gilmerton; and it not being proven that either Wauchton did deliver the irredeemable right himself, or any by his order, or that any sums were paid to him above the sums in the wadset, or any bond given therefor, to make out a transaction for an irredeemable right, neither *scripto vel juramento*:—that in law the right of reversion could not be taken away upon any presumption, founded upon the buying of other lands by an irredeemable right, as being of the like value; there being nothing mentioned in the last right of a discharge of the reversion. Likeas, the buildings and great expense waired out upon lands, known to be wadset by a singular successor, could be no ground of an argument against the reversion.

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1676. November 7. The LAIRD of BALFOUR *against* JOHN WOOD'S EXECUTORS.

JAMES Beaton of Balfour, having granted a wadset of some lands to James Wood, for security of the sum of ten thousand pounds, which consisted in bonds, bearing principal sums, and annualrent extending to that sum; Balfour having charged the debtors, and finding that some of the annualrents were discharged before his assignation, did pursue the executors of James Wood for payment of the annualrents; and for payment of the annualrents of these annualrents, since the wadset.

It was ALLEGED, That there could be no annualrents craved for these annualrents; because no annualrents were due in law but for principal sums bearing annualrent *ex parte*; or upon sums whereupon the debtors were denounced rebels, conform to the Act of Parliament.

It was ANSWERED, That the pursuer was in the case of the sale of lands for a

principal sum of money, contained in the disposition, where the buyer possessing the lands was liable for annualrent, albeit the disposition, or contract of sale, did not bear any.

The Lords did find, that the annualrents of the bonds assigned, being but a part of the principal sum contained in the wadset, that the wadsetter enjoying the full back-tack duty or the rents for the lands wadset, he was liable for the annualrent of these sums which were due, and which the granter of the wadset was deprived of by the wadsetter's deed; and that there was no difference betwixt dispositions of wadsets and absolute irredeemable rights, as to this case.

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1676. *November 14.* THOMAS LAWRIE, Merchant in Edinburgh, *against* ROBERT ANGUS, Skipper.

THERE being a decret recovered before the bailie of Leith, at the instance of Thomas Lawrie, for payment of the sum of five hundred merks, for damage and interest he had sustained by Robert Angus, skipper, upon that ground, that he had embarked a parcel of goods in his ship, which was spoiled through a default in his pump, which was not sufficient;—there being a bill of suspension presented, and both parties ordained to be heard upon the reasons libelled:

It was ALLEGED for the skipper, That it being in his power only to dispose of the goods and loading, and accordingly he having placed that small parcel in the upper room, where they could never receive damage from the pump, notwithstanding the merchant, at his own hand, and without consent of the skipper, had, upon fear that the privateers might come aboard and take away the said goods, did take away the same from that place, and put them in the lowest room of the said ship, and placed them at the foot of the pump; whereby he was the cause of the damage himself; it being ordinary, by stress of weather, to sufficient pumps, when water is drawing, that some thereof will burst out and prejudice goods that lie nearest them, if they be such that, by a small quantity of water, will receive damage: which allegiance was once found relevant, and admitted to probation, as an instrument taken upon the minutes of process bears; but the bailie did take up or abstract the same, and, notwithstanding, gave out this new decret for damage.

It was ANSWERED for the merchant, That the bill ought to be refused; because all skippers are, in law, answerable for all the places of their ship, and for the sufficiency of their pumps; and thereby the whole loading would be free from all damage, unless, by running on banks or rocks by stress of weather, there be a leak stricken in the ship. Likeas, it was offered to be proven, that the said pump was insufficient when she came out of the harbour.

The Lords did find, That the skipper was obliged to prove that the pump was sufficient when she came out of the harbour, and that the merchant's making use of any part of the ship did not free the skipper; and, therefore, they ordained that the skipper prove the sufficiency of the pump at that time.

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