

(REDEMPTION.)

Collifon, both as to the apprifing and annualrent; and there is an order used upon Collifon's right, for redeeming Moor's apprifing, and a declarator thereupon intented; and, therefore, Gordon of Seatoun, as having right from Moor, hath now no interest to declare Watfon's first apprifing to be fatisfied, feeing Moor's title is extinct by redemption, which Watfon now craves to be declared.—It was answered for the purfuer, That he hath the first order, and the first declarator of redemption of Watfon's apprifing, wherein he hath now intited; and Watfon hath no interest, by his order, againft Moor, to stop the declarator used by Moor, but the first action of declarator should be first discussed; and the Lords may justly refuse the declarator used upon Collifon, or Federat's order, by way of defence, and reserve it by way of action, and in justice ought so to do; because, if the declarator of Moor's order be elided, by way of exception, by Collifon's order, then Watfon's first apprifing becomes irredeemable, and he carries an estate of 30 chalders of victual for 3000 merks: The only remied whereof is the interruption of the expiring of Watfon's apprifing, by the order used by Moor; which if it be not declared, hath no effect; and, for this wicked design, Watfon hath acquired Collifon's right, that he may exclude Moor's declarator; but though Moor's order be declared, Collifon's order may also be declared, whereby Watfon, as having right from Collifon, will come in Moor's place.

THE LORDS refused to sustain the declarator of Collifon's order, by way of defence, to exclude the declarator of Moor's order; but declared Moor's order; and found Watfon, the first apprifing, countable, after the legal, upon Moor's order.

*Stair, v. 2, p. 451.*

1715: Jun 21.

Sir GEORGE INNES of COXTOUN; and JAMES WISEMAN, his Assignee, against JAMES CHALMERS.

JAMES CHALMERS having right, by progress, to an apprifing of the lands of Linkwoods, led in the 1671, there is a declarator of redemption pursued by COXTOUN, and WISEMAN, his assignee; and a declarator of expiration of the legal by the said James Chalmers, as having right to the comprifing.

It was alleged for the reverfer, That the comprifing was still redeemable; because, by contract betwixt one of Chalmers' authors having right to the comprifing, and the tutor of the debtor, in anno 1672, the comprifing was declared redeemable for payment of 6000 merks; which contract is narrated in the conveyance to Chalmers.

It was answered: The contract contains a special provision, that the fums should be paid at Whitfunday 1673; as also, that the said agreement, nor no clause

No 4.

No 5.

A comprifer may, by contract within the legal, perpetuate the reversion.

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No 5. therein, should any ways invalidate the right to the comprising, nor hinder the running of the legal thereof.

It was *replied*: There was a second restriction by a posterior contract, *in anno* 1685, which did perpetuate the reversion; for, by that contract, the comprising was turned into a wadset, redeemable for 8000 merks, and a locality for payment of the annual rent.

Wifeman, the compriser, objected against the said wadset; and *alleged*, That the said contract, 1685, was a personal contract, which was only valid against the contractors and their heirs; but could take no effect against him, a singular successor, in the right of the comprising, which is now expired, and whereupon infestment has followed.

It was *answered*: That the first contract 1672, did restrict the comprising to 6000 merks; and albeit that contract contained the qualities and provisions above-mentioned; yet the posterior contract 1685, did renounce and extinguish these qualities, and perpetuate the reversion; so that the comprising could never expire, both contracts being within the legal; for, whatever may be argued as to the effect of backbonds of trust, in relation to comprising, that the same may be thought to be ineffectual against singular successors, after expiration of the legal; yet comprisers, within the legal, may prorogate or perpetuate the reversion. The expiration of the legal being a privilege, provided in favours of creditors, which can be effectually renounced; and an apprising is a diligence of that nature, that the purchaser thereof ought to know it is extinguishable by receipts, discharges, compensations, of all which no vestige is to be found upon record; and for that same reason, the benefit of the legal may be prorogate or renounced. *2do*, Purchasers *bona fide*, for a just and equivalent onerous cause, have many favours and privileges indulged to them by law, that they may not be losers in what they fairly acquired; and, therefore, Chalmers's case might be favourable, if he could allege that he had purchased the comprised lands at an adequate value, seeing his author in the full possession thereof, and the legal expired. But the fact is quite otherwise; for the price paid was the very sum of 8000 merks in the wadset, and the possession of the hail lands apprifed never attained by his author.

‘ THE LORDS having considered the contract 1672, and the posterior contract in the 1685, wadsetting a part of the lands, apprifed under reversion, for the sum of 8000 merks, and both contracts within the legal, and that the apprifed lands were not purchased for an adequate value; they repel the defence, and sustain the declarator of redemption.’

*Dalrymple, No 146, p. 200.*