

wadset, by which the wadsetter gets all the fruits of the subject, whether casual or otherwise, and is not obliged to account.

To which it was ANSWERED by Lord Elchies, That the characteristic of a proper wadset, as may be learned from the Act 1661, betwixt debtor and creditor, is this, that the wadsetter accepts of the fruits of the subject, or some part of these fruits, for the annualrent of his money; nor is it necessary that the whole fruits should be assigned him for his annualrents, but it is sufficient that only a part be given him, out of which he must take his hazard of making his annualrent the best way he can, and for the rest he may be obliged to account: for this reason it is that the wadsetter often takes a tack from the reverser, and is obliged to account for the surplus tack-duties after paying his annualrent, notwithstanding of which the wadset is undoubtedly a proper wadset; and in the same manner, in the wadset-contract a superplus-duty is often stipulated to be paid by the wadsetter over and above that part of the rents or fruits which he has for his annualrents, which is the case of the wadsetters on the estate of Skelbo. For the same reason it is that, in the wadset of lands, mines and minerals, coals might be excepted and declared to belong to the reverser, and yet the wadset continue proper, just as the casualties of superiority are reserved in this case. Put the case that the wadsetter had granted a discharge of all the casualties at the time of the wadset, or made a gift to the reverser of them; would the wadset for that reason be less proper? The Lords sustained the vote; *dissent*. Drummore. March 7th, adhered unanimously. Lord Elchies mentioned a case, decided in the year 1734, where a wadset was found proper though the reverser was bound to pay so much every year to the wadsetter as part of the annualrent of his money; so that to make a wadset proper, it is not necessary the wadsetter should take his hazard of the fruits for his whole annualrent, but only for a part.

*N. B.* In this case it was said in the pleadings, and not disputed, that a liferent of a superiority would not entitle to a vote, unless it was a liferent by reservation; because any other liferenter was not entitled to the casualties of entries, and consequently so far was not in possession of the subject.

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1754. February 15.

— against —

UPON report of Mr Boswell, Lord Probationer, the Lords found that even the wife of a journeyman tailor might have paraphernalia, such as rings and other trinkets, which in this case the woman, who was the daughter of a bailie in Linlithgow, had brought with her; but they found that she could not assign or dispose of them without the consent of her husband; for though the wife be absolute proprietor of her paraphernalia, the husband is her curator, and she cannot act without his consent. This the Court found unanimously, though they had formerly varied in their decisions upon this point.