No 52. interest of the wadset sum, as also in respect there is no clause of requisition in the wadset, and that the wadsetter had continued so long in possession after the term appointed for the redemption; found the pursuer not now entitled to redeem, and assoilzied;" and on advising petition and answers, "the Lords adhered."

The question turned on this, Whether it was a pledge, or a sale at an adequate price. If a pledge, then, although even *in pacto legis commissoriæ*, the redemption is barred by the lapse of 40 years (*vide supra* Nov. 10. 1738, Pollock against Storie, and which decision has been followed in all the like instances which have since occurred), yet here the minorities would have kept the redemption open; but if a sale at an adequate price, then the old act of sederunt applies, which declares irritancies of reversions in sales to be effectual according to the agreement of parties. And so the case was here considered to be, in respect no proof was offered by the pursuer, that, at the date of the wadset, the lands were of a higher rent than the annualrent of the sum, and that there was no clause of requisition, whereby it would have been a most unequal bargain, if the right of redemption had been to continue for 40 years.

Fol. Dic. v. 3. *p.* 337. *Kilkerran*, (Irritancy.) *No* 2. *p.* 297.

No 53. Irritancy not incurred by neglecting the order of redemption in a decree of declarator.

1769. *February* 3. Leitch *against* Swan.

James Leitch disponed his lands of Ardoch to Henry Swan, who granted a back-bond, declaring them redeemable for payment of a certain sum, but under condition, that unless the money was paid on or before Martinmas 1763, or consigned at the parish church of Kilwinning, in the hands of a responsible person, upon 40 days lawful premonition, the back-bond should be null, and the lands irredeemable.

Upon the term-day of Martinmas 1763, after Henry Swan's death, Leitch required a renunciation of the wadset, upon a tender of a bill bearing to be accepted by Henry Swan, and of the balance in money.

This tender was refused, and an action brought by the tutors of Swan's son, an infant, for reducing the bill as forged, and declaring the irritancy to have been incurred.

The bill was declared to be vitiated and improbative, and the Lord Ordinary pronounced an interlocutor, whereby he found the lands still redeemable: "But, in case the defender shall not, 60 days preceding the term of Martinmas 1767 years, intimate to the pursuer and his tutors, in presence of a notary and witnesses, his intention to redeem, and, in case he shall not, on the said term of Martinmas 1767, between the hours of 12 at noon, and 1 afternoon, consign, in the Bank of Scotland, the principal sum and annualrents due thereon, found the lands, from and after the said term of Martinmas 1767, shall belong in property to the pursuer, and be irredeemable."

Leitch neglected to make the premonition required by the interlocutor; but, a few days before Martinmas 1767, informed the tutors by letter, that he intended to redeem the lands on the term-day, when he accordingly tendered the money; and, upon their refusal, consigned it in the Bank of Scotland, in December following, and brought a process of declarator of redemption. No 53.

Pleaded in defence; The pursuer did not obtemper the order of redemption prescribed in the interlocutor; and though, from equity, the court is in use to allow penal irritancies to be purged, at any time before declarator, or the lapse of the long prescription, yet there is no example of admitting a power of redemption, after decree of declarator has been pronounced. There is no longer any room for equity; and, were the reverser again indulged in a power to redeem, declarators of irritancy never could be brought to a conclusion; there would still be the same claim for a new indulgence as before.

Answered; The order of redemption pointed out in the interlocutor, and the irritancy adjected to it, cannot have greater force than a conventional irritancy stipulated by the parties; and, whatever may have been the rigour of the ancient law, it is now established in practice, that there is no necessity of observing the specific terms of the order of redemption, but that it may be supplied by equivalents. The intimation by letter was as effectual a notification as a formal premonition under form of instrument, and must, at any rate, be sustained to the effect of saving against a penal irritancy.

"THE LORDS found, that the lands are still redeemable, and found the defender liable in expenses of process."

Act. *Rae, G. Buchan-Hepburn.* Alt. *Crosbie, George Fergusson*
Reporter, *Monboddo.*

G. F. *Fac. Col. No 82. p. 331.*

1771. *March* 7.

JOHN BOYD, of Easter Greenrig, *against* JAMES STEEL, Son of the deceased John Steel, of Easter Greenrig.

No 54.
The seller of land for an adequate price, took a back-bond, declaring the lands redeemable at certain terms, upon three months premonition. He gave premonition, but

ON the 28th of November 1752, John Boyd disponed the half of the lands of Greenrig to the deceased John Steel, his heirs and assignees, heritably and irredeemably, without any manner of reversion, redemption, or regress whatsoever; but of the same date with this disposition, Steel, the purchaser, granted a bond of reversion, declaring that the said lands should be redeemable by John Boyd and his heirs, on payment of the price, at the term of Martinmas 1753, or at any term of Martinmas or Whitsunday thereafter, in the years 1754, 1755, 1756, and 1757; the seller, or those in his right, always giving premonition three months at least before the term at which he shall redeem the lands. It