

And they having failed to do so, “the Lords removed the curators from their office of curatory, as suspect, and found both minor and curators, conjunctly and severally, liable to the pursuer in expenses, reserving to the minor, for such part as he might pay thereof, relief against the curators.”

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1780. *June 23.* MISS GRAHAM of GARTMORE *against* Her CURATORS.

WILLIAM Graham of Gartmore named certain persons to be tutors and curators to his three daughters, with power to direct their education, and other usual powers: His wife, Mrs Margaret Porterfield, mother to the children, was one; and she intending to marry after Mr Graham's death, a gentleman, a merchant in Lisbon, her eldest daughter, who by this time was a few days above 12 years old, resolved to go and live with her. The tutors interposed by bill of suspension, and craved an interdict, prohibiting her to go out of Scotland till the question was tried, *viz.* how far a young lady under curatory such as this, a few days only above 12 years of age, had power to choose her place of residence. The bill was past, and an interdict granted; but, on report of Lord Braxfield, the Lords repelled the reasons of suspension, and removed the interdict. They were next to unanimous; but several of them regretted that, in females, pupillarity ended so early. They thought the special clause empowering the curators to direct the education of the young ladies made no difference, and they asked, where could a daughter stay more properly than with a virtuous mother?

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## WADSET.

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1772.

EDMONSTONE *against* TWEEDDALE.

TWEEDDALE, upon a narrative of his being debtor to Edmonstone in the sum of L.49 sterling; therefore, for payment of said sum and annualrents, he sold to Edmonstone, his heirs and assignees, heritably, but under redemption, the lands of \_\_\_\_\_, redeemable from the said James Edmonstone, and his foresaids, by payment of the foresaid sum. The disposition contained an assignation to the rents in all time thereafter until payment of the sums before mentioned; and it did not limit the reversion to any term. After the possessing the subject for some time, Edmonstone pursued Tweeddale for payment, and insisted that the deed was a wadset, which entitled the creditor to redeem his money,—a sale under a perpetual reversion being an absurdity in terms, and truly resolving into a proper wadset, being impossible to be con-

verted into a right of property, but remaining a right in security, which is plainly a right of wadset for ever. Tweeddale on the other hand insisted that it was a sale.

“ The Lords found, That, by the conception of the disposition in question, and of the said writing relative thereto, the said disposition was granted by the defender, and accepted by the pursuer *in solutum* of the debt ; but redeemable upon payment of the principal sum, interest, and expenses, being recovered by intromission with the rents, or payment being made by the defender.”

A wadset may be constituted without containing an express clause of requisition, or even without mentioning the word wadset *in græmio* of the deed, provided that from other clauses it sufficiently appears that such deed was intended. Upon this ground it was, that the judgment of the Court proceeded in the case of *Scotstarvet* against *The Earl of Balcarras*, decided 1762.

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## WARRANTICE.

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1777. February 7. LIVINGSTON of WESTQUARTER'S HEIR *against* LORD NAPIER.

THE estate of Westquarter, having been sold by James Livingston of Westquarter to Mr William Drummond, *anno* 1728, was, by Mr Drummond, sold to Lord Napier with absolute warrandice. The heir of Livingston, having made up titles, brought a reduction of the sale to Lord Napier, as contrary to a tail-yie, and thereupon evicted the estate from Lord Napier, *anno* 1762. The Lord Napier thereupon pursued Mr Drummond's heirs upon the warrandice.

The Lords pronounced this interlocutor, 1st August 1776 :—“ Find that Mrs Margaret Drummond, and the other representatives of Mr William Drummond, are liable to Lord Napier in the payment of the value of the estate of Edinbellie, purchased by Mr Drummond from Mr Livingston,—sold by Mr Drummond to Lord Napier,—and now evicted from Lord Napier,—as the same stood at the time of eviction, with interest thereof from the time when Lord Napier ceded the possession thereof to Mr Livingston, and in time coming while payment : But find, that, by the law of Scotland, and notwithstanding of Lord Napier's ceding the possession as aforesaid, Mrs Margaret Drummond and the other representatives of Mr William Drummond are entitled to recover from Mr Livingston all meliorations on said estate now evicted, made either by Mr William Drummond or Lord Napier, posterior to their purchases. And, in order to ascertain the value of the estate evicted, appoint the parties, betwixt and Tuesday next, to say whether they, or any of them, desire further proof of the rental and value of the said estate, as the same stood at the time of eviction, if that can be had, or as the same stands now. And, as to meliorations,