

FREEHOLDER.

1773. FREEHOLDERS of DUMBARTON *against* HAMILTON.

SIR Archibald Edmonstone of Duntreath disposed to his brother, Captain Edmonstone, in liferent, and to James Hamilton, younger of Hutchison, in fee, the superiority of certain lands in Dumbartonshire, entitling to a vote. The liferent was absolute; but the fee was declared redeemable at any term of Whitsunday or Martinmas, for payment, or on consignment of ten merks. There was no narrative of any loan; neither was there any pretence of any,—both liferenter and fiar were enrolled; but, on a complaint to the Court of Session against the fiar, (6th March 1773,) though the Lords, by their first interlocutor, thought that the freeholders had done right in enrolling him, and that the title claimed upon was a proper wadset; yet, on a reclaiming petition, they afterwards (summer 1773,) found that the right was not a proper wadset, but, *quoad* the fiar, was a redeemable right; and that the fiar was not entitled to a vote, in terms of the statute of Queen Anne. There was no complaint against the liferenter.

The justice of this decision was much controverted in the complaint of John Henderson, younger of Fordell, against Captain Dalrymple, decided 7th March 1776. It was said, that, in the case of Mr Hamilton of Hutchison, it was absurd to create a liferent upon a redeemable fee; and it was likewise absurd for a fiar to claim a vote, on the footing of his being a wadsetter, when he neither did, nor could draw any profits out of the estate as long as the liferenter lived. But the truth is, these were not the grounds of the judgment: the judgment went upon the point above stated, that the right was a redeemable right, and not a proper wadset.

In the above mentioned case of Captain Dalrymple against Henderson, &c. the Captain maintained two propositions:—*1mo*, That his right was, to all intents and purposes, a proper wadset; and, *2do et separatim*, That a sale *sub pacto de retrovendendo*, where the dispositive is entitled to the full use and possession of the lands during the subsistence of the right, without accounting, is not struck at by the statute of the 12th of Queen Anne.

The subject conveyed to Captain Dalrymple was superiorities which yielded 11s. 1d. 4-12ths, for which he paid £20; and on payment whereof they were redeemable.

See the difference betwixt a wadset and a sale under reversion, explained Hist. Notes, subjoined to Statute Law, p. 439, *ad finem*.