

THE LORDS sustained the order of redemption, bearing the consignation of the decret *pro tanto*; albeit it was *alleged*, That the order could not be sustained unless the whole money had been actually consigned conform to the contract; which the LORDS found not needful in this case, the decret being for the superplus of the mails of the wadset lands more than paid the annualrent of the money and so is accessory to the wadset and redemption.

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Newbyth, MS. p. 89.

1667. February 1.

CREDITORS of Sir JAMES MURRAY against JAMES MURRAY.

THERE being a wadset of the lands of Stirling granted by Sir James Murray to James Livingston of the bed-chamber, containing a clause of requisition and reversion, on payment at London; the lands being appraised by Sir James's Creditors, they having the right of reversion, did use an order at Edinburgh against James Murray, as now having a right to the wadset, and pursue a declarator. The defender *alleged* absolutor, because the order is not conform to the reversion, which is *strictissimi juris*, and behoved to be done at London. It was *answered*, The place being adjected in favour of James Livingston who resided at London; the pursuers have done more, having consigned at the present wadsetter's domicile, London being only appointed, as it was the former wadsetter's domicile, wherein he hath benefit, and can have no detriment. It was *answered*, He was not obliged to debate his detriment, for if his money were in London, he would get six of the hundredth of exchange to Scotland.

THE LORDS sustained the order, the pursuers making up what should be modified by the Lords, for the interest of the wadsetters.

Fol. Dic. v. 2. p. 325. Stair, v. 1. p. 432.

* * * Newbyth reports this case :

THERE being a contract betwixt Sir James Murray and James Livingston of the bed-chamber, whereby the said James Murray wadset to the said James Livingston, the lands of Skirling, redeemable for the sum of L. 2000 Sterling; Mr Andrew Oswald and remanent Creditors of Sir James Murray having comprised the said lands, and used an order of redemption and intended declarator, concluding count and reckoning upon the act of Parliament, which is first craved before declarator of redemption; which cause being called, it was *alleged* for the defender, (denying always any such reversion), That the defenders cannot be obliged to count, because any order of redemption used, and consignation, was to have been at London in the hands of the chamberlain at London; and the order and consignation made by the pursuer was here at Edinburgh, as said is. To which it was *replied*, That albeit in the reversion granted by Mr Livingston, it was ex-

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A reversion bearing payment at the wadsetter's house in London, satisfied by consignation at Edinburgh where his successor dwelt.

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pressly provided, that the order and consignation should be at London, and which was only done because the said James was residenter there, and for his conveniency allenary, but having made over his right in favour of Sir Robert Murray, and the right thereof being now in the person of the defenders, Scotsmen residenters in Edinburgh, the order and consignation made at Edinburgh is sufficient. To which it was *duplicated*, That all reversions being *stricti juris* ought to be fulfilled *in omnibus punctis*, so that the defenders are not obliged to debate upon the conveniency or inconveniency thereof; and if the money had been paid and consigned at London, which the pursuer might easily have done, the defenders might have made profit thereof, by returning the same to Scotland upon exchange. THE LORDS repelled the defence and duply, and sustained the order, notwithstanding the same, with the consignation, was made at Edinburgh, and not at London; reserving to themselves what consideration the defender should have for exchange.

Newbyth, MS. p. 91.

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The reverser
may retain
the money, if
the wadsetter
appear not.

1670. February 24. JARDINE of Applegirth *against* JOHNSTON of Lockerby.

APPLEGIRTH having apprised Lockerby's estate, and pursuing on the apprising, Lockerby *alleged*, That the apprising was satisfied, at least he offered presently what was defective in this account. Lockerby *alleged* upon a wadset right, whereof an order was used; whereupon the question arose, and was reported by the auditor, whether after order used for redemption of a proper wadset, the sums consigned, being immediately taken up by the redeemer, and the wadsetter remaining four or five years in possession thereafter, and declarator of redemption being obtained upon production of the sums consigned, with the annualrent from the consignation, whether the wadsetter had right to the mails and duties, and might refuse his annualrent, or if he behoved to accept of his annualrent and count for the mails and duties. It was *alleged* for the wadsetter, That the consignation was but simulate, and the money remained not in the consignatar's hand, so that he did justly retain the possession, and so was not accountable for the duties.

THE LORDS found the wadsetter accountable for the duties, seeing he had no objection against the legality or verity of the order, so that it was his fault that he kept not the day of consignation, and received his money conform to the premonition; and that the user of the order did no wrong to take up the money out of the consignatar's hand, seeing consignations are upon peril of the consigner, he making the same forthcoming at the time of declarator, with annualrent since the consignation.

Fal. Dic. v. 2. p. 324. Stair, v. 1. p. 675.