years, for payment of the sum of L. 19 yearly. It was *replied*, That the redemption being suspended during the wadsetter's lifetime, and the granter's lifetime only, and the lands being possessed thereafter by the space of many 19 years, the tack falls within the act of Parliament, King James the Second, ordaining tacks of wadset-lands set near to the half of the duty, and not near to the full value, to be void and null; but so it is, that the wadset-lands are worth of yearly value 1200 merks, and the tack-duty only L. 19, and some service, yearly. It was *duplied*, That the tack could not fall within the act of Parliament foresaid, because the act was only as to tacks where lands were given in wadset, for security of a sum lent upon the wadset, for which the duties of the lands were given in place of the annualrent, which was antichresis; but here no such wadset, for it was a contract, where the wadsetter disponed the absolute and irredeemable right of the heritage to the Earl of Marshall, as most necessary for his barony, and harbour of Peterhead; as likewise his right of other lands and milns, with the rental of the lands controverted and tacks thereof, so that they were in the case of an excambion; and it was expressly provided, that the 3000 merks should be paid in case of redemption, and a 19 years tack of the lands for the same duty they then paid the time of the contract, which is therein expressed; and, there being no order used by the Earl of Marshall himself, the pursuer could be in no better condition, who was in place of his right. This was not decided, but, before answer, the defender ordained to condescend upon the years of his tack and rental, which were to run the time of the contract.

No 53.

Gosford, MS. p. 543.

1677. *January* 5. The EARL of GLENCAIRN *against* JOHN BRISBANE.

No 54.
Effect with regard to creditors, of a reversion in favour of the heirs of the reverser's own body allenarly.

THERE was a declarator raised at the instance of the Earl of Glencairn, as being a lawful creditor to Francis Freeland, prior to a disposition made by him to Robert Hamilton and John M'Nairn, two other creditors of his, of the lands of Freeland; which two creditors, with consent of the said Francis, the common debtor, and they all with one consent did dispone the same, for 8000 merks, to John Brisbane, under reversion, by a bond granting the same to be redeemable by the apparent heir of the said Francis' own body allenarly, upon payment of the foresaid sum; and therefore craved, that, upon requisition and payment made by the said Earl, the said John Brisbane might be decerned to denude himself of his right of the said lands in the Earl's favours. It was *alleged* for the defender, That no such declarator might be sustained, because all reversions, by our law, are *strictissimi juris*, and this bond of provision, being only granted in favours of the apparent heir, who never yet had existed, no creditor of the father's could have the power of redemption, the father being simply

No 54. and absolutely denuded. It was *replied*, That albeit reversions were *stricti juris*, yet that was only interpreted where the case is betwixt the disponer and the receiver; but, in this case, the question being upon a prior creditor of the father's to the dispositson made to him, if upon reversion, and the person who received the disposition and granted the reversion in favours of his apparent heirs only, that reversions cannot militate against the prior creditors; but they ought to have liberty to redeem, as if it had been granted to the father, otherwise they might be totally secluded from their just debt, against which they have a remedy by the act of Parliament 1621, King James VIth. It was *duplied*, That, by the act of Parliament cited, and all practiques, remedy is only granted to prior creditors, where fraudulent dispositions are made, but, in this case, it being offered to be instructed, that the lands were purchased for a just debt and adequate price, to the worth of the lands, no prior creditor, unless upon inhibition, can have any remedy in law; otherwise it would obstruct all commerce and security from those who *bona fide* may make a purchase for a just price; and the reversion being only granted out of favour, not to the disponer, but to the heirs-male of his own body, upon special consideration, unless there had been an heir-male, and a comprising led against him at the instance of the father's creditors, in which case, he would be obliged to fulfil the father's condition of the reversion, viz. both to pay all expenses of building and melioration of the lands, they could never redeem, because their comprising could give them no more right than the person had from whom they comprised. THE LORDS did seriously consider this case, and found, in the *first* place, that the reversion being taken by his father to his apparent heir, albeit he had none, yet they did sustain the declarator at the instance of prior creditors, that the same was comprisable by them for their just debt; but, in the *second* place, they found, that if the buyer of the land did pay a full and adequate price for the land, which was never affected by any inhibition against the father, that in reason and law it could not be taken away from him so as to deprive him of all the expenses of reparation; and therefore they ordained a conjunct probation, as to the worth of the lands the time of the bargain, and if the price given therefor was a full and adequate price.

Gosford, MS. No 931. *p.* 508.

*** Dirleton's report of this case is No 116. p. 1011., *voce* BANKRUPT.

1677. *January* 12. CREDITORS of WAMPHRLY *against* LD CALDERHALL.

No 55. IT being alleged by a donatar of escheat, that a sum was become moveable by requisition, in this unfavourable case the LORDS found the requisition null for not bearing the production of a procuratory.

Fol. Dic. v. 2. *p.* 323. *Stair. Dirleton. Gosford.*

*** This case is No 16. p. 8340. *voce* LITIGIOUS.