

but the question was whether here were properly back-tacks? The President thought the last wadset for that reason improper, but not the first, but as this was not reported we did not determine it.

No. 6. 1741, Nov. 18. SAME PARTIES.

THE question was first judged 17th June 1740 (*supra*) and came again to be determined, viz. Whether a proper or improper wadset? and the Lords found the first wadset proper, because the back-tack did not extend to the end of the wadset with an irritancy upon failure of payment of the back-tack duty, but was only during the father's life; so that had he died next day the wadsetter had not alienably a faculty to possess, but was obliged to possess; and the reverser the son could not keep the possession, though he had punctually paid the tack-duty,—*renit.* Arniston and Dun; and Kilkerran, Murkle, and Monzie did not vote. But they unanimously found the second wadset improper. 18th November 1741 Adhered.

No. 7. 1745, Feb. 13. SINCLAIR of Ulbster *against* MURRAY of Clairdon.

A WADSET was granted in 1675 by Breadalbane with consent of Earl of Caithness, but who did not sign it, to Murray of Clairdon and Sibmister, for about 31,000 merks. Ulbster and Freswick in the right of reversion are now redeeming the lands; but then Clairdon is not in possession of half of Clairdon and Sibmister, and so cannot put them in possession; and there is no evidence whether ever Clairdon attained possession. Freswick insisted that the law presumed that he had got possession since there was no complaint of want of possession, and said it was believed in Caithness that he had made over his right to this family of Caithness who are in possession. Clairdon again said, that if one is in possession on a title, possession *retro* may be presumed, but where there is no evidence that ever there was possession, the law will not presume it. The Court were divided in opinion and much diffculted, but they ordered the redemption to proceed, leaving a sum in the reverser's hands, (viz. 4500 merks) till the question be determined as to these lands, and granted diligence to the other party for clearing the question of possession. Another question was also reported as to the warrandice to be given by Clairdon, who is served heir *cum beneficio*, and the wadset sum carried off by creditors adjudgers; and we directed that Clairdon should give only warrandice from fact and deed,—but the creditors absolute as to the sum received.

* * Connected with this subject are the cases Ramsay against Creditors of Wylliecleugh 12th June 1741, *voce* REDEMPTION, and Sinclair against Murray 4th December 1741, *Ibidem*; in the note relative to the first of which Lord Elchies refers to his opinion written upon one of the Informations in the cause. The Session papers are in Vol. VI. p. 471, Vol. IX. p. 206, and Vol. XII. p. 164. One of the Informations wants the end, where probably the notes alluded to had been written, which do not appear upon any of the other numerous papers upon the case.