

1622. July 23.

E. of DESMONT *against* HAY.

No 16.

Order of redemption in legal securities.

IN an action of redemption pursued by the E. of Desmont against Hay, for redeeming of certain lands comprised from the compriser, by virtue of the legal reversion, the LORDS found, that the order of the solemnity of this redemption should be kept sicklike as in other redemptions, which are used by virtue of reversions conventional betwixt the parties, (except concerning the time and space of the requisition and premonition, which in legal reversions require to be used only on six days), and therefore they found in this process the requisition made by virtue of the letters raised by deliverance of the LORDS, craving charges thereby to be directed against the party, to come and receive the money, whereupon the comprising was deduced, with the charge given by the messenger, and executed against him, conform to the letters, not to be a sufficient requisition, and found the order so used not to be sufficient, and therefore assoilzied from the order of redemption; seeing they found, that in orders of redemption of this nature, the requisition ought to be made by a procurator, having power from the party to require, and that instruments should be taken thereupon in the hands of a notary, and before witnesses, as in all other redemptions.

Act. *Belshes.*Alt. *Cunningham.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 321. Durie, p. 32.*

* * * Haddington reports this case :

IN an action betwixt Preston of Whitehill and Hay, the LORDS found, that albeit premonition might be made to a compriser, upon few days warning to receive the money contained in the reversion legal, yet the premonition and remanent order of redemptiou behoved to be done in presence of a notary and witnesses, as in other ordinary redemptions.

Haddington, MS. No 2658.

1622. November 13.

L. BASS *against* WAUCHOPES.

No 17.

Necessary that the procuratory be shewn, at the time of requisition, altho' not asked for. But see *infra*.

L. BASS being obliged to Wauchopes in payment of some money, at any term against which he was required, and being required by one as procurator, and in name of Wauchopes, to whom the bond was given, and thereupon being charged to make payment, the LORDS suspended the charges, because the procurator, who required, at the time of making requisition, shewed not the party required the procuratory, whereby he had power to require; and therefore the LORDS would not sustain the requisition, albeit the creditor ratified the requisition.

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tion at the bar, and that also there was a procuratory produced, lawfully subscribed before the requisition making; yet because it was not shewn at the very time when requisition was made, it was not sustained; albeit it was not alleged, that the debtor, when he was required, desired to see the procuratory, but only because the requisition bore not that the requirer offered to shew his procuratory, or that he shewed the same.

No 17.

Act. *Hope et Nicolson.*

Alt. ———.

Fol. Dic. v. 2. p. 322. Durie, p. 34.

1623. November 26. LA. of DRUM against WISHART.

THE LORDS found consignation of the money lawful, being made in the hands of the consigner's servant; and notwithstanding it was opposed, that the money was used since the consignation, viz. lent to consign in favours of another, in respect the party consigner was responsible, and that they had done diligence to obtain declaration, and offered the money at the bar.

No 18.

Kerse, MS. fol. 84.

*** Haddington reports this case:

IN the reversion pursued by the Laird of Drum against the Heirs of Captain Wishart, he having consigned the money into the hands of a servant of his own, it was *alleged*, That the redemption could not be lawful, unless he paid annualrent for the money since the term of Whitsunday last; because, in effect, he had retained the money in his own hands, and made use of it; whilk was no otherwise qualified, but, at Martinmas last, he had lent a part of the same to a merchant to offer in a redemption, whilk he retired within half an hour, and had it ready at the bar to deliver to the party; and the consignation being made in his servant's hand, it was after the refusal of the Treasurer and Dean of Guild to receive it. In respect whereof, the LORDS sustained the order of redemption, and declared him free of any annualrent.

Haddington, MS. No 2932.

1625. July 2. DR. KINGAID against HALIBURTON.

FOUND, in redemptions of comprised lands, that the compriser's meddling with the farms and duties of the lands beyond the annualrent, *ad hunc effectum* to diminish the principal sum heritable, by way of reply, without declarator.

No 19.