

1623. *February 21.* JOHN CUNNINGHAME *against* WALTER FORRESTER.

THE Laird of Glengarnock having borrowed 1000 merks from Walter Forrester, upon his lands of Boquhan, which he wadset to him, redeemable upon that sum; and for more sure payment of his annual-rent, having assigned to him the teinds of certain lands, enumerated in the contract of wadset: this wadset thereafter being desired to be lawfully redeemed at the instance of Mr John Cunninghame, successor to the Laird of Glengarnock, in his right, upon the consignment of the principal sum;—the Lords would not sustain the order of redemption, because, the time of the consignment, the redeemer had not consigned the prices of the victual of the whole teind-sheaves of the lands, assigned by the contract to Forrester, for the annual-rent, seeing the redeemer was in possession of the teind-sheaves of one of the lands and rooms assigned: Albeit, it was answered by the redeemer, that he could not, nor ought to consign no more but the principal sum, because the bolls whereto the teinds extended were not specially set down, neither was the price liquidated: besides, he offered to prove, that Forrester, defender, was in possession of a great part of the teind-sheaves of these lands, which were assigned to him for his annual-rent continually, since the date of the contract of wadset; which teind-sheaves, possessed by him, far surmounted the ordinary annual-rent of 1000 merks, so that he being possessor of more than satisfied his annual-rent, he needed not consign further, but his order ought to be sustained; and, if he had right to any other teinds by his contract for bygones, this redemption took not away his right, but thereafter he might pursue therefor. Notwithstanding of which answer, the Lords found the redemption could not be sustained, until the defender was first satisfied of the teinds which he wanted; and, therefore, they thereafter ordained the parties to condescend upon the quantities of the teinds which the defender wanted, that the Lords might modify the prices of the bolls, and cause pay the same to the defender; which being payed presently, with the principal sum, they would sustain the order, and not otherwise. And this was done notwithstanding of the Act of Parliament, 1592, which appoints wadsets of victual to be lawfully redeemed by payment, or consignment of ten for each hundred; and that the pursuer subsumed, that the defender was payed of ten for each hundred, by the retention and possession of the teinds, which extended to a greater quantity.

*Act.* Hope. *Alt.* M'Gill. Gibson, *Clerk.* *Vid.* 6th July 1630, Nisbet *against* E. of Cassils.

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1623. *February 22.* IRVING *against* LORD GRAITNEY, &c.

IN an action of ejection, pursued by one Irving against old Graitney, his son, and oye;—the Lords found it sufficient probation to infer sentence against old Graitney; albeit, it was proven that the ejection was actually committed by the son and oye, and not by the good-sir; because the witnesses proved that the good-sir lent to his son and oye, horses to till the land after the ejection, and that he gave them seed also to sow the ground after the same.

Hay, *Clerk.*

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