

No 9.

A disposition of lands carries all right that was in the disponent; and therefore a disposition of land for the liferent use of the disponent, was found to carry the reversion, though not expressed.

1665. December 5.

BEGG against BEGG.

BEGG having disposed some land to his son, redeemable on a Rose Noble and having married a second wife, he disposed the same to her liferent, and assigned her to the reversion. The father having used an order, pursues declarator. The son *alleges* absolutor, because he was assigned to an apprising, which apprising carried the right of the reversion of that wadset, and thereby his father was denuded of the reversion, and could not redeem the wadset, till he redeemed the apprising. It was *answered*, that the father was not simply denuded during the legal, during which time, the apprising was but like a right granted in security, which denuded not the fiar; as if the son for security of a sum, had been assigned to the reversion, the father was not denuded, but might use the order, by which the security was not worse but better, the same holds in this case; and therefore it is, that he against whom an apprising is led, may redeem the first apprising, albeit the second appriser has appraised the reversion, otherwise no man could redeem an apprising, unless he redeemed all his appraisings at once, which have different legals; and this case is as favourable, because the reversion was only to the father in his own life; and therefore the son endeavoured to hinder him to redeem, by taking right to this apprising. It was *answered*, that the case was not alike in a conventional reversion, as in a legal: And that the apprising led against the father in his life, would perpetuate the reversion; and that this case was unfavourable, where the father intended to frustrate his heir, in favours of a wife of the second marriage, to whom he had assigned the reversion.

THE LORDS having upon the first report considered the favourableness of the son's case, sustained the defence, but afterwards upon bill, ordained them to be heard again *in presentia*, and having heard them, the LORDS were of different opinions, so that that came not to a vote; but the LORDS, before answer, ordained the wife to insist upon her right, who alleged that she might redeem, *ad hunc effectum*, to enjoy the benefit of her liferent right, after her husband's death. It was *answered*, *imo*; That she wanted the concurrence of her husband; *2do*, That her assignation was not intimated. It was *replied*; *imo*, Her assignation was registrate in the register of reversions, conform to the act of Parliament; which registration being *publicandi causa*, needed no intimation; *2do*, That she had a disposition in liferent, by her contract, of the lands, which carried *omne jus* in the disponent, as to the liferent right, during her life, and so carried the reversion, though not expressed, and her sasine being registrate, it was equivalent to the registration of the assignation.

THE LORDS sustained the wifes interest, and declared in her favours, for her liferent use, and found the disposition with the sasine registrate, and the assignation also registrate sufficient.

Fol Dic. v. 1. p. 422. Stair, v. 1. p. 321.

. Newbyth reports the same case :

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THOMAS BEGG being obliged, by his contract of marriage, to infest the bairns of the marriage in some tenements of land, in Edinburgh, and accordingly having disposed the same to his son John Begg, but under reversion of ten merks, in anno 1644, or thereby, and having used an order conform to the reversion, pursues declarator of redemption. It was *alleged*, no declarator, because the reversion being in the father's person, the same was appraised by the son, and so the father had no title to redeem, or pursue this declarator. It was *answered*, that the appraising being but lately deduced, and there being 8 or 9 years of the legal to run, no law can force the survivor to redeem the said appraising, but he may warrantably forbear without any hazard, so he redeem within the legal, just as in the case of two appraisings led against one and the same person, by one and the same creditor, the first whereof was upon the point of expiring, and several years yet to run in the second, it were absurd, that the heritor should be debarred from redeeming the first, because he is not in readiness to redeem the second, albeit he has several years yet to run for that effect. *Secundo*, the allegiance proponed for the appraiser, hath no prejudice, because the said right being redeemed from the son, and so coming in the father's person, the same will accresce to the son by virtue of the appraising, which will carry the right of property : But the point being waved, it was *separatim alleged* for Elizazeth Rigg, spouse to Thomas Begg the father, that the declarator ought to be sustained at her instance, because she is assignee to the reversion, and order of redemption, and summons of declarator, long before the appraising, on which assignation, and disposition she stands infest in her liferent use allenary of the said tenement, and that for implement of her contract of marriage. To which it was *answered*, that the summons was pursued in the husband's name, and that the assignation to the reversion was not intimated. In was *replied* to the first, that by the assignation she might pursue either in her husband's name, or in her own ; and to the second, that an assignation to a reversion, doth not require for consummation thereof, the solemnity of an intimation, seeing the registration of an assignation is necessary *ex necessitate juris*, and which supplies intimation. *2do*, The said Elizabeth was infest in liferent in the said tenement which would carry the reversion. THE LORDS sustained the declarator at the wife's instance, during her husband's lifetime, and found no necessity of intimation, of her assignation to the reversion, order of redemption, and declarator.

Newbyth, MS. p. 43.

. This case is also reported by Gilmour :

THOMAS BEGG, merchant, having infest his son in certain lands in Edinburgh, redeemable by payment or consignation of ten merks, Thomas uses

No 9. an order of redemption and pursues declarator of redemption against John, his son, who *alleges*, there can be no declarator, because John having comprised the reversion upon a debt owing to him by his father, viz. for the third of his father's moveables, belonging to him as executor to the deceased mother, for which third he obtained sentence against his father, upon which sentence the comprising was deduced; and the order cannot be sustained, unless there were an order against the comprising; because by the comprising the conventional reversion is consolidated with the property in the person of his son. It was *answered*, that the comprising was but lately deduced, and the legal not expired, so that the father might redeem the right made by him to his son, which will not prejudice the comprising; just as if there had been two comprising deduced against the father, he might redeem the first comprising, without prejudice of the second, and in his own time he might redeem the second also. *Replied*, that the first and second comprising being both in one man's person, both ought to be redeemed together; because by the second comprising the reversion of the first was taken away from the party against whom it was declared, and settled by the second in the comprising's person; and therefore both behoved to be redeemed, and not the first without the second, *multo magis* when the first reversion being conventional and settled in the comprising's person the one cannot be redeemed without the other.

THE LORDS refused to sustain the order, unless the comprising were redeemed also.

Gilmour, No 152. p. 108.

1682. *January* WILLIAMSON *against* THREAPLAND.

No 10.

AN inhibition was found to fall under the assignation to a bond, and sum therein contained, without the general clause of all that followeth, or might follow thereon, on a competition with the cedent's singular successor.

Fol. Dic. v. 1. p. 422. Harcarse, (ASSIGNATION.) No 98. p. 19.

* * Sir P. Home reports the same case.

JOHN WILLIAMSON, sheriff-clerk of Perth, being assigned by Agnes Lamb, relict of James Dykes, to a bond of 2700 merks, granted by Patrick Anderson of Tullieallan to her and her husband in liferent, and the children in fee, whereupon there had been an inhibition served, pursues a reduction against Sir Patrick Threapland of the right made by Anderson to him of certain lands *ex capite inhibitionis*. *Alleged* for the defender, That there could be no process upon the inhibition, because it was only an extract under the pursuer's own hand, which could not make faith for him, unless the principal were produced; as also, albeit it were produced, yet it could not be a ground