

No 24.

1662. July 23. LORD FRASER *against* PHILORTH.

To take away apprisings, even against singular successors, there needs no formal grant of redemption or renunciation registered, conform to the act, which extends only to wadsets properly so called.

*Fol. Dic. v. 2. p. 330. Stair.*

\* \* \* This case is No 62. p. 938. *voce* BANKRUPT.

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1666. July 5. EARL OF HUME *against* His WADSETTERS.

No 25.

A reversion was not found null, not being registered before 1617, in terms of the act 1555, which was found to be in desuetude.

THE EARL OF HUME pursues certain Wadsetters to count and reckon for the superplus, more than their annualrents, conform to the late act between debtor and creditor; who *alleged*, first, Absolvitor, because the reversion produced is null, not being registered conform to the act of Parliament 1555, c. 29. ordaining all reversions to be sealed, and subscribed by the party's own hand, or a notary, which shall make no faith, if it be not registered. It was *answered*, That that act of Parliament was in desuetude, not only upon the point of not registration, but want of sasine, otherwise the act of Parliament 1617, anent the registration of sasines, had not been necessary.

THE LORDS repelled the defence, and found the said old act of Parliament to be in desuetude.

One of the defenders further *alleged*, That the rights of these reversions are prescribed, because they were not pursued within the 13 years appointed by the Parliament 1617, c. 12. It was *answered*, That the pursuer or his predecessor were minors, during the space of four or five years of the said thirteen, *et prescriptio non currit contra minorem*. It was *answered* for the defenders, that in this part of the act, there is no exception of minors, albeit in the former part of the act, anent the 40 years, minority be expressly excepted, *et exceptio firmat regulam in casibus non exceptis*, especially seeing reversions being but *pacta de retro vendendo*, and so bonds were prescribed by the old act of Parliament, so the addition of 13 years was *ex mera gratia*, and ought to be strictly interpreted.

THE LORDS did also repel this defence, and found that the 13 years run not against minors.

It was further *alleged* for one of the defenders, That the reversion made use of against him, was since the act of Parliament 1617, and not registered, and so could not operate against him, who is singular successor to the granter thereof. The pursuer *replied*, That before the defender's right, he had used an order of

redemption, and had executed a summons of declarator, whereby *res fuit litigiosa*; and no right granted thereafter can prejudge the pursuer.

No 25.

THE LORDS found the reply relevant to elide the defence.

*Stair, v. 1. p. 388.*

\* \* \* Newbyth reports this case :

THE Earl of Home pursues ——— Bruntsfield of Nethermains, for payment of the superplus of the mails and duties of four husband lands, of Hassington muir, then satisfies the annualrent of 1400 merks, for which the lands were wadset produces two reversions, one granted in December 1555, and the other in July 1588, by the said James to the said Alexander Lord Home; as also pursues Alexander Home, son to umquhile Abraham Home of Bonnetsidehead, for payment of the superplus of the mails and duties of five husband lands in Home muir, than will satisfy him the annualrent of L. 5500 for which the same was wadset, conform to a bond of reversion granted by the said umquhile Abraham Home to the Earl.

In August 1640, it was *alleged*, No respect can be had to Bruntsfield's reversions, because prescribed; *2do*, They are null, not being registered conform to the act of Parliament, Q. Mary, P. vi. c. 29., appointing writs containing reversions, to make no faith, unless they be registered in some ordinary register. And for Abraham Home, it was *alleged*, No respect can be had thereto, because Alexander Home is a singular successor, and the back-bond not being registered in the register of reversions, cannot operate against him. THE LORDS repelled the whole three allegiances proponed for the defender, and found, there was no necessity of registration of reversions before the act of Parliament 1617, and that the 13 years' prescription cannot run against a minor, and that there was no necessity of registrating the back-bond; and that the Earl of Home having made an order of redemption *in anno* , cannot be prejudged by any disposition made by the father to the son, being *inter conjuntas personas* after the date of the order and declarator following thereupon.

*Newbyth, MS. p. 69.*

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1666. July 31. EARL SOUTHESK against MARQUIS of HUNTLY.

No 26.

A BACKBOND by an appriser, renouncing all benefit of his apprising, and discharging the same, in so far as prejudicial to another party's right, was found effectual against a singular successor, though never registered.

*Fol. Dic. v. 2. p. 330. Stair.*

\* \* \* This case is No 36. p. 10203., *voce* PERSONAL and REAL.