

1670. July 22.

JOHN FORRESTER *against* BROWNIE.

THIS was a declarator of an order of redemption used, of two sundry wadsets of one tenement. ALLEGED, the order cannot be declared; because, *1mo*, The instrument bears no numeration to have been made of the money as it should have done, but only that he was there with a bag ready to pay the money, in which bag there might have been only slate stones, and so it is null. *2do*, That order can never be sustained, because the terms and tenor of the reversion were not kept, in so far as it was provided by the letter of reversion that the order should be used at Whitsunday 1668, and yet the same was not used till the Whitsunday thereafter; whereas reversions are *strictissimi juris et præcisa earum forma est servanda*.

ANSWERED to this; that *esto* he did not keep the precise tenor of the reversion, yet that can never take away from him his lands, or right of reversion called in law *jus de retrovendendo*; seeing its strictness is not so great unless there had been a clause irritant declaring that, if the order were not used at such a term, the reversion should expire, which was not here.

They were to have the Lords' answer on this, whether or no a party that had neglected to use the order of redemption conform to the words of the reversion, may yet use the same, yea or no.\*

Then *3tio*, ALLEGED, the order is null; because, it being declared by the reversion that it should not be lawful to the granter of the wadset to redeem, till such time as he paid also all the expenses waired by the wadsetter haver on reparation of houses, &c. which expenses being given up in count at the pretended order, he refused to allow the same, and so the order is null. *4to*, Though the money was consigned at the time of the order, yet the same being uplifted shortly after, the defender must be freed of the annualrent of the same since the consignment, and the pursuer must be liable therein.

The Lords found this last relevant.

*Act.* Trotter.

*Alt.* Wallace and Seaton.

*Advocates' MS. No. 90, folio 83.*

1670. July 22. GIBSONE, Brother to DURIE, *against* HALIBURTON of Innerleith.

THIS was a charge upon a bond granted by the defender to Mr. James Reid, and assigned to the charger by him; which was suspended, *1mo*, Because the time of the granting thereof he was a minor, having curators, and he gave the bond without their consent. ANSWERED, Ought to be repelled, in respect the bond is not only subscribed by himself but by two of his curators, which makes a *quorum*. REPLIED, That will not fortify the bond, because by his act of curatory three are appointed only to be a quorum.

He is ORDAINED to produce the act of curatory before answer.

The *second* reason of suspension, (and he had also a reduction on that same

\* This order was found by the Lords lawful.

reason,) was lesion by granting that bond. ANSWERED, He can never pretend lesion, because it is offered to be proven that this debt was a debt owing by his father, (to whom he was heir,) and that there was a decret recovered against him at the cedent's instance, for payment of that debt as representing his father. REPLIED, That decret can prove nothing, because discharged by the cedent. DUPLICED, Cannot be heard, because if any such discharge be, the same was granted in contemplation of this bond now charged upon; and this I offer me to prove by the suspender, and those who were at that time his curators, their oaths. TRIPLICED, *Nulla modo relevat* by his curators' oaths to his prejudice; neither will he suffer them to depone.

They were to have the Lords' answer upon this if his curators should depone, yea or no.

*Act. Dewar.*

*Alt. Suspender, Spotswood.*

*Advocates' MS. No. 91, folio 84.*

1670. *July 23.*

MR. JAMES M'GILL *against* WATSONE.

THIS M'Gill having been minister at Largo in 1655, and having waired L.700 upon the reparation of his manse, there was a stent imposed, for reimbursement of thir expenses, upon the hail heritors of the parish, conform to the act of Parliament; and this defender refusing to pay his proportion thereof, viz. L.19, he was convened before the Sheriff of Fife to pay it, and decret was there recovered against him; which decret was suspended on this reason, that though the acts of Parliament allowed only a manse worth L.1000, yet that this charger had repaired and made the manse worth L.2000; and that the suspender was not cited to the imposing of that stent, as he should have been; and that neither at that time, nor for many years thereafter, he had no interest in that parish; and so this stent not being *debitum fundi* can never be sought of him, but the minister must have his relief of the then possessors of the land.

Thir reasons were repelled, because there was no reduction of the decret; neither would they supersede extract till the reduction should be ready, but reserved it as accords.

*Act. Suspender, Trotter.*

*Alt. ———.*

*Advocates' MS. No. 93, folio 84.*

1670. *July 23.*

ALEXANDER HAY *against* ALEXANDER HOME, Tailor.

HOME and his spouse having granted bond to Janet Geddes, kail-seller in Edinburgh; Home, two days before Janet her decease, *viis et modis* gets the bond; and being now pursued by Hay, who, as sister-son to Janet, is her executor, to pay that sum contained in the bond; he defends, that though he was once debtro to Janet in that sum, and for that effect granted this bond; yet the same being