

same, it may affect the husband's heirs and executors, but ought not to prejudice the husband's lawful creditors prior to the deed of remuneration.

The Lords did find, That any right, made in remuneration to the wife, could not prejudice his prior lawful creditors; seeing, in law, he was not obliged to grant that deed; and that the legacy which fell to her during the marriage did, *ipso facto*, belong to the husband, and not to the wife: and, therefore, any thing given to her in contemplation thereof, was, in effect, *sine causa onerosa*; and, being voluntary, should not prejudice lawful creditors.

Page 573.

1676. July 26. SIR WILLIAM PURVESS *against* The CONVENTICLERS.

IN a pursuit at Sir William's instance, as his majesty's agent, against conventicle-keepers, for payment of the fines imposed by the Act of Parliament; compareance being made by advocates for the persons cited, as likewise some being called as intercommuners,—by report to the whole Lords, it was ADVISED, If advocates could compear, consult, and plead for them.

It was found, That all who were denounced rebels, and not relaxed, they had not *personam standi in judicio*, and no defence could be proponed by them; and as to the intercommnners, that no advocate could meet or consult with them, all communication being interdicted. Which seemed hard to some; seeing, 64 Act Parl. advocates are allowed to consult and plead for those accused of treason, which is a higher crime.

Page 573.

1676. July 26. SIR ANDREW RAMSAY, Lord Abbotshaw, *against* FRANCIS KINLOCH of Gilmerton.

IN a declarator, at the instance of the Lord Abbotshaw, against Gilmerton, to hear and see it found, that his right to the land of Gilmerton was a redeemable right upon payment of the sum of fifteen thousand pounds, in so far as his right did flow from Mr John Cockburn, by disposition and assignation, which Mr John, when he obtained from Waughton an absolute and irredeemable right, did grant a reversion to Waughton, of that same date, declaring the lands to be redeemable upon payment or consignment of that foresaid sum: likeas, when the said Mr John did dispone his right to the said Francis, with warrandice from his own proper fact and deed, to secure him from all hazard through the reversion he had formerly made to Waughton, Francis did grant and subscribe a declaration, that he should be free of the personal warrandice, in case of redemption by Waughton; and did accept of the said irredeemable right, with the burden of the reversion; which now belonged to Sir Andrew, as coming in the place of Waughton. It was craved that it might be declared, that he had full power to redeem the said lands for the price foresaid.

It was ALLEGED for the defender, That no such declarator could be sustained upon the grounds foresaid.

1st. Because his right to the lands of Gilmerton is an absolute and irredeemable right, not only granted by Mr John Cockburn, who had only a right of wadset, but likewise by the Laird of Wauchton, for all right, title, and interest that he had in the said lands : so that the pursuer being in no better condition than the Laird of Wauchton, to whom no reversion was granted by the defender, he can never question his absolute and irredeemable right. The said writs and declaration whereupon the summons is founded, was never a delivered evident to the Laird of Wauchton ; but was only made to Mr John Cockburn, for his security against the warrandice of the disposition made by him ; likeas it remained constantly in his possession till he died, Wauchton never being made master thereof, nor getting a transumpt, and so was never his evident : and it being most clear, by the declaration itself, that it mentions nothing in favours of Wauchton, who had subscribed an irredeemable right, and that it was only designed for warrandice, as said is, the defender having paid the full worth of the lands, and having bought, at that same time, the lands of Bracko, by an absolute and irredeemable right from Wauchton, at as low a rate as he had purchased the lands of Gilmerton, it cannot be imagined, from any sense or reason, that he intended to purchase only a right of wadset.

Because the said parties were many days heard *in præsentia*, upon several emergent papers, whereupon they founded new allegeances, so that it would be a great trouble to follow this case, as it was pleaded by their advocates for the advantage of their clients ; I shall here, likewise, set down what was further alleged for the said Francis, and whereupon he founded at first ;—that he not only had an absolute and irredeemable right from Mr John Cockburn and Wauchton ; but likewise an assignation to Mr John's right, which was absolute and irredeemable, and not burdened with any right of reversion in favours of Wauchton.

2d. He founded upon a mutual and general discharge, subscribed by the pursuer and defender, of all questions, clags, and claims whatsoever, without any reservation or exception, long after Sir Andrew had acquired the rights whereby he pretends to succeed to Wauchton ; and so cannot pursue this declarator.

3d. He founded upon a missive letter, which was produced in process by Sir Andrew, under the hand of Mr James Anderson, who was witness to the Laird of Wauchton's subscription and Gilmerton's ; bearing expressly, that he had sent, not only the disposition to be signed by him, but likewise a *formula* of a reversion, to be drawn *in mundo*, and subscribed at the sight of the Lord Humble, to be granted and subscribed by the said Francis, before he should obtain that absolute and irredeemable right to the lands of Gilmerton : whereupon he concluded, that Wauchton, having delivered and subscribed that absolute and irredeemable right, without craving or receiving any reversion, as he was expressly advised, and that after he knew that Mr John Cockburn denuded, it is clear that Wauchton passed from any such pretence ; as being convinced, that, for these and other lands then bought, the defender had paid more than a just and full price.

The Lords having considered the dispute, and writs produced, with the de-

positions of witnesses taken *ex officio*; it was found, by plurality of votes, that the defender's right of the lands of Gilmerton was irredeemable; and, therefore, assoilyied from the declarator, as founded upon the reversion granted by Mr James Cockburn to the Laird of Wauchton: as likewise, as founded upon the back-bond and declaration granted by the said Francis to Mr John, and upon the missive letter directed by Mr James Anderson to the Laird of Wauchton, bearing the *formula* of a reversion, to be subscribed by the said Francis, before the irredeemable right should be subscribed and delivered. Which decret was very hard, and against the votes of several of the Lords, whereof I myself was one.

1st. That an irredeemable right and disposition being effected, with a reversion by a back-bond, did burden the lands, not only as to the first wadsetter, but likewise as to all singular successors; who did not only acknowledge that the said lands were under reversion, but likewise did oblige themselves to warrant against the first granter of the wadset; so that he could not but know of the real right of the reversion.

2d. Albeit Wauchton did subscribe any irredeemable right to Francis, yet it being clear that the same was only sent to him by his own servant, that albeit it was subscribed, it should not be delivered but upon a formal reversion, to be granted by Gilmerton; and it not being proven that either Wauchton did deliver the irredeemable right himself, or any by his order, or that any sums were paid to him above the sums in the wadset, or any bond given therefor, to make out a transaction for an irredeemable right, neither *scripto vel juramento*:—that in law the right of reversion could not be taken away upon any presumption, founded upon the buying of other lands by an irredeemable right, as being of the like value; there being nothing mentioned in the last right of a discharge of the reversion. Likeas, the buildings and great expense waired out upon lands, known to be wadset by a singular successor, could be no ground of an argument against the reversion.

Page 574.

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1676. November 7. The LAIRD of BALFOUR *against* JOHN WOOD'S EXECUTORS.

JAMES Beaton of Balfour, having granted a wadset of some lands to James Wood, for security of the sum of ten thousand pounds, which consisted in bonds, bearing principal sums, and annualrent extending to that sum; Balfour having charged the debtors, and finding that some of the annualrents were discharged before his assignation, did pursue the executors of James Wood for payment of the annualrents; and for payment of the annualrents of these annualrents, since the wadset.

It was ALLEGED, That there could be no annualrents craved for these annualrents; because no annualrents were due in law but for principal sums bearing annualrent *ex parte*; or upon sums whereupon the debtors were denounced rebels, conform to the Act of Parliament.

It was ANSWERED, That the pursuer was in the case of the sale of lands for a