

7th July 1681. And a sub-feudation of this nature would be lawful. *2do*, Littledean, the superior, by a bond was obliged to receive and confirm Haitly, the ward-vassal's creditor, in thir lands. *3tio*, He has homologated the wadset by acquiring it, and bruiing the lands by it.

ANSWERED to the first,—In a wadset, the property is alienated without the superior's consent, and the ward-vassal retains nothing but a tack as a tenant, which is merely personal, and no real right, (except allenary in the case of transmission of the lands to a singular successor, by the 18th Act of Parl. 1449;) and if the back-tack were declared, recognition would certainly be incurred then. To the second,—His bond was only to confirm the particular creditors therein mentioned, whereof Sir Alexander Don was none; and, *esto* he was surrogated in Mr Alexander Strang's place, and with his money paid Strang, yet our law knows no such substitution without a formal conveyance and disposition, else the prior right extinguishes. To the third,—He acquired the wadset not so much in contemplation of the ward-lands, (which he could bruiik *alio titulo*,) as of some blench lands also contained in the wadset.

Yet the infeftment being granted out of both blench and ward-lands, was not sustained to secure against a recognition, in *Cromarty's case*, *supra*, 23d Feb. 1683.

The Lords having advised the debate and writs, they repel the defence founded on the back-tack set by the wadsetter to the vassal, reverser; and find the recognition inferred by the wadset's being over the major part of the feu, however small the wadset sum be: and also repel the defence founded on the superior's obligation to confirm Strang's wadset, the same being only personal to Strang, and not for Sir Alexander Don's wadset: but sustain the third defence of homologation, and find the same proven by the qualification of taking a disposition of the lands from the wadsetter, (though blank in the receiver's name,) and by producing the same, and debating thereon in this process; and therefore assoilyied from the recognition. *Vol. I. Page 460.*

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1687. June 29. JOHN WARDLAW of ABDEN *against* SIR HENRY WARDLAW of PITREVIE.

THE reduction, *ex capite fraudis et circumventionis*, at John Wardlaw of Abden's instance, against Sir Henry Wardlaw of Pitrevie, was debated; *viz.* that old Pitrevie, to whom the defender is served heir, being the pursuer's tutor and curator, he took no care of his education, but sent him to London under George Wardlaw, a most unfit governor, where he was trepanned by Sir William Ballantine, &c. to marry a common whore; and then George (under the pretence that it was better his cousin Pitrevie should succeed to him, than his spurious issue,) procured from him an absolute disposition to all his estate, in land and money, worth 100,000 merks, giving him only 4000 merks by year; and to show that it was a premeditated contrivance, the lands are bounded, and the sums and dates of the bonds are all particularly inserted in this disposition, though it was done at London. And then he sent him to Holland, and pro-

cured a ratification of it there, when he was past 21 years ; and having brought him home *anno* 1670, when he was 23 years old, he, at Dumfermline, impe- trated from him another disposition of all, and restricted his annuity to 3000 merks a-year ; and that the pursuer having complained of this to the Parlia- ment in 1681 and 1685, they remitted it to the Session. And they were redu- cible deeds, the first being taken from a minor by his sole intromitting curator, *sine quo non* ; and the second was *ante rationes redditas*, and a continued tract of the same cheat, and worse than *Cornelius Neilson's to Bonar's Heirs*, men- tioned 7th December 1682.

ANSWERED,—He was a perverse boy, and riotous, refusing to stay at home ; and he choosed George Wardlaw himself, though he had at first Mr Robert Melvil, his own uncle, and a grave man, to be his tutor. 2do, That the first disposition was acknowledged to be but a trust ; but the 2d at Dumfermline was most onerous, and adjusted by the Lords Preston and Cranston, his friends ; and if he and his mother (who has a great liferent) live long, it will be a dear bargain to Pitrevie. 3tio, It is homologated since, by his discharging the an- nuity quarterly, and a new disposition since his complaint in Parliament, revised by Mr David Dewar, advocate, his good-brother. 4to, Pitrevie bruiks by valid rights granted by a major not declared an idiot ; and so they cannot be taken from him ; and Dury, 5th July 1635, *Leslie*, shows, that the Lords rejected a reduction on qualifications of circumvention stronger than thir. 5to, Pitrevie cannot count now for his tutory, his father being dead and discharged, and so presumed to have given up all his instructions. But it was offered to be proven they were yet in his own hand. The President desired to know the true value of the estate dispoed, that he might consider the lesion Abden had by the bargain.

This cause being advised on the 17th February 1688, the Lords sustained the many reiterated acts and contracts to purge the circumvention ; and as- soilyed.

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1687. June 29. The EARL of LAUDERDALE *against* JOHN WATSON.

IN the Earl of Lauderdale's removing against John Watson, late collector of the cess in the Merse, from a roum in Swinton ; the Lords, on Saline's report, repelled his other defences, but sustained this, that Sir William Sharp, who stands in the right of that estate, gave orders to David Maitland to let him sit another year ; and found it probable *scripto vel juramento* of Sir William.

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1681, 1682, 1684, 1685, 1686, and 1687. The CHIRURGEONS of EDINBURGH *against* The APOTHECARIËS.

See the prior part of this case *supra*, page 408.

1682. January 24.—His Royal Highness the Duke of Albany and York