

1709. July 28.

Sir ARCHIBALD and Mr JOHN STUARTS of Blackhall *against* JAMES STUART  
of Carsewell.

CARSEWELL having, in the year 1688, purchased from Sir Archibald Stuart of Blackhall the lands of Langhouse, with two pieces of meadow, and a part of a wood distinct from the lands, he, several months thereafter, to gratify Sir Archibald, granted him, at his desire, an obligation to pass from the two pieces of meadow and wood, if he, and his then eldest son, should think fit to redeem the same from Carsewell within two or three years at most, by payment of 300 merks, which he paid for them. Neither Sir Archibald nor his eldest son offered to redeem, for the space of four years that they lived together; but Sir Archibald, after his son's death, assigned the obligation to Mr John Stuart, his second son, now of Blackhall, who used an order of redemption, and pursued a declarator.

*Alleged* for the defender, His obligation being only a matter of compliment and civility, signed several months after he had purchased the ground, wherein he allowing Sir Archibald and his son the freedom to retract the bargain within two or three years at farthest; and none of them having signified any inclination to do it for the space of four years, while the young Laird lived; Sir Archibald, or his assignee, cannot pretend any benefit by the clause of reversion, which was not conceived in favour of him alone, but in favour of him and his then eldest son; reversions being *strictissimi juris*.

*Answered* for the pursuer, Though reversions be strictly interpreted as to the transmission, and go not to assignees, unless expressed, they are largely and favourably interpreted as to the time of endurance; and irritancies thereof are purgeable before declarator; because, the allowing a reversion implies that the price was not adequate; and it appears from the defender's back-bond, that there was not a competent price given for the subject craved to be redeemed. Nor is it of any moment to object, that the reversion is only personal to Sir Archibald and his eldest son; seeing Mr John Stuart is now in his brother's place, as his heir, and the father concurs in the process. Besides, our law esteems no right to be personal, without the exclusive words *allenarly* or *only*.

THE LORDS found, That the subject controverted is not redeemable; in respect the backbond was granted several months after the disposition, and so was not *pars contractus*; consequently, the reversion behoved to have been claimed in the specific terms thereof.

*Fol. Dic. v. 1. p. 488. Forbes, p. 350.*

No 49.

A subject was found not redeemable, although a back-bond had been granted some months after the disposition, giving liberty to redeem within a certain time, which had not been attended to. The subsequent back-bond was held not to be *pars contractus*.

No 49.

\*\*\* Fountainhall reports this case.

1709. July 29.—JAMES STEWART of Kersewall, Advocate, in the 1688, buys from Sir Archibald Stewart of Blackhall the lands of Langhouse, and, at the same time, two pieces of a meadow, and a parcel of wood, by a separate bargain; as to which last, Blackhall desired to know his eldest son's inclinations, then abroad, ere it should be irredeemably concluded. For satisfying him in that point, Kersewall gave him a declaration, that Sir Archibald should have liberty, within two or three years after his son's return, to redeem that piece of land, by repaying him the 300 merks, then given as the price thereof. Young Blackhall returned shortly after, and lived three or four years, and never signified his displeasure nor dissent; but, long after his death, Blackhall raises a declarator of redemption, founded on the foresaid obligation and declaration, and offered to repay the 300 merks, but did not insist to have him to count for the superplus rent above his annualrent. *Alleged*, It was a real sale, and the bond was a mere compliment, given in civility, and *ex gratia*, and bore nothing of the stile of a reversion, nor was it registered, as the law requires: Likeas, the meadows pay but 16 merks yearly, which proves, that 300 merks was an adequate price for so small a rent; and reversions are *stricti juris*, and precisely to be performed *in terminis*; but *ita est*, the three years, granted for redeeming, are long ago expired, and the condition of reversion, given by way of favour, is now quite evanished; and to keep these reversions perpetually open, is to embarrass and incumber property, and to discourage all meliorations and improvements of land; and the faculty being to Sir Archibald and his son, jointly, the son being dead, the other cannot exerce alone. *Answered*, He opposed the writ bearing a plain reversion; and, though the time limited be expired, yet, it bearing no irritant clause, the Lords ever allow them to be purged before declarator, they being most unfavourable and penal, and of the nature of a *pactum legis commissoriae*, which is reprobated *in pignoribus*; and even in contracts of emption vendition are always purgeable at the bar, as has been found, 7th February, 1628, Pringle against Kerr, No 39. p. 7203. and in many cases since: And here it is offered to be proved, that the lands were worth more than the 300 merks paid for them; and, lately, in C. Erskine's process against Sir G. Hamilton, No 48. p. 7212, about Tulliallan, the LORDS found the irritancy purgeable, and the lands redeemable; and the faculty was not personal to his eldest son; *qui sibi providet, etiam hæredibus providet*. Many of the Lords were for trying the value of the lands, whether the price was adequate; but the plurality found redemption not being used within the three years allowed for that end, it was not now redeemable.

Fountainhall, v. 2. p. 520.