baxters proved in general that the Rebels ordered the Magistrates of Canongate to get bread baked for the Army under pain of military execution, or that the Rebels would go to the baxters shops and take it, but brought no proof of any scarcity of wheat in the town or of any force on the defenders more than the other inhabitants, and no force on any of them to buy the pursuers wheat. On the contrary there seemed to the majority to be evidonee that it was voluntary. Therefore we (17th November 1748) found them liable for the current prices without regard to the payments made the Rebels, whose receipts they produced, *renit.* Milton, Drummore, &c. and (22d November) found them not liable *in solidum*, but every one for his own intromissions.—24th February 1749, We unanimously altered this last and found them liable conjunctly and severally, and gave only the expenses of extracting the decreet,—*me renit. inter alios.*

WADSET.

No. 1. 1734, Feb. 13. BOGUE *against* MITCHELL.

THE Lords found it a proper wadset; 2dly repelled the prescription.

No. 2. 1735, Dec. 2. COCHRAN of Hill *against* COCHRAN.

THE Lords allowed a proof before answer of working coal and limestone *cum onere maximarum expensarum.* The President was of a different opinion, because the sale being for an adequate price he thought this reversion expired without declarator; and I should have been of the same opinion, but as that point was settled by the Ordinary's interlocutor, and we could not now review or alter it, I thought it could not alter the point of law supposing it to be a wadset, and so the proof was granted.

No. 3. 1736, June 18. GIBSON *against* CROCK.

THE Lords adhered *nem. con.*; and we thought the reversion needed not be registrate after using the order, and that the subsequent infeftment was void and null.

No. 4. 1738, Dec. 19. STORY *against* POLLOCK.

See Note of No. 3, *voce* IRRITANCY.

No. 5. 1740, June 17. M'LEOD of Genzies *against* Ross of Aldie.

THE Lords found no usury, but seemed more doubtful whether the wadsets were not improper. They seemed to think that a wadset with a back-tack was an improper wadset, and the wadsetter liable to account after attaining possession, (for during the back-tack he gets only his annualrents, or if the back-tack duty exceeds the annualrent it is usury;)

but the question was whether here were properly back-tacks? The President thought the last wadset for that reason improper, but not the first, but as this was not reported we did not determine it.

No. 6. 1741, Nov. 18. SAME PARTIES.

THE question was first judged 17th June 1740 (*supra*) and came again to be determined, viz. Whether a proper or improper wadset? and the Lords found the first wadset proper, because the back-tack did not extend to the end of the wadset with an irritancy upon failure of payment of the back-tack duty, but was only during the father's life; so that had he died next day the wadsetter had not allenarly a faculty to possess, but was obliged to possess; and the reverser the son could not keep the possession, though he had punctually paid the tack-duty,—*renit.* Arniston and Dun; and Kilkerran, Murkle, and Monzie did not vote. But they unanimously found the second wadset improper. 18th November 1741 Adhered.

No. 7. 1745, Feb. 13. SINCLAIR of Ulbster *against* MURRAY of Clairdon.

A WADSET was granted in 1675 by Breadalbane with consent of Earl of Caithness, but who did not sign it, to Murray of Clairdon and Sibmister, for about 31,000 merks. Ulbster and Freswick in the right of reversion are now redeeming the lands; but then Clairdon is not in possession of half of Clairdon and Sibmister, and so cannot put them in possession; and there is no evidence whether ever Clairdon attained possession. Freswick insisted that the law presumed that he had got possession since there was no complaint of want of possession, and said it was believed in Caithness that he had made over his right to this family of Caithness who are in possession. Clairdon again said, that if one is in possession on a title, possession *retro* may be presumed, but where there is no evidence that ever there was possession, the law will not presume it. The Court were divided in opinion and much difficulted, but they ordered the redemption to proceed, leaving a sum in the reverser's hands, (viz. 4500 merks) till the question be determined as to these lands, and granted diligence to the other party for clearing the question of possession. Another question was also reported as to the warrandice to be given by Clairdon, who is served heir *cum beneficio*, and the wadset sum carried off by creditors adjudgers; and we directed that Clairdon should give only warrandice from fact and deed,—but the creditors absolute as to the sum received.

*** Connected with this subject are the cases Ramsay against Creditors of Wylliecleugh 12th June 1741, *voce* REDEMPTION, and Sinclair against Murray 4th December 1741, *Ibidem*; in the note relative to the first of which Lord Elchies refers to his opinion written upon one of the Informations in the cause. The Session papers are in Vol. VI. p. 471, Vol. IX. p. 206, and Vol. XII. p. 164. One of the Informations wants the end, where probably the notes alluded to had been written, which do not appear upon any of the other numerous papers upon the case.