

may hereafter arise concerning the relief to which the appellant may be entitled, against what persons or subjects such relief (if any) ought to be extended.

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v.
CAMERON.

For the Appellant, *W. Murray, Alex. Forrester.*
For the Respondent, *A. Hume Campbell, C. Yorke.*

Note.—“The Lord Chancellor in delivering his opinion expressed a good deal of indignation at the fraudulent means of obtaining the act; and said that he never would have consented to such private acts, had he ever entertained a notion that they would be used to cover frauds.”—*Kames’ Dic.* p. 7445.

[M. 2439.]

JOHN STIRLING of Herbertshire, in the	}	<i>Appellant.</i>
County of Stirling, Esq., -		
ARCHIBALD CAMPBELL, younger of	}	<i>Respondent.</i>
Succoth, Esq., - - -		

House of Lords, 2d April 1754.

WADSET.—Proper and improper Wadset, difference between them in law, and also as a title for voting.

CAPTAIN CAMPBELL claimed to vote as one of the No. 107. freeholders of the county of Stirling, under a title which was objected to as insufficient. This title was a wadset entered into by William Stirling and his ancestor whereby, in consideration of the sum of L.82, the former sold and disposed to the respondent’s ancestor, the lands of Gunnershaw and others within the county of Stirling for twenty-one years, redeemable thereafter. Upon this he was infest in the lands so disposed, consisting partly of property and partly superiority.

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The appellant objected, that the respondent's wadset being an improper one, and not a proper wadset, which alone gave a freehold qualification, contended, that he had no right to be placed on the roll of freeholders: that contracts of wadsets were of two kinds, proper and improper. The proper wadset is that by which the disponee takes possession of the lands for the use of the money, and is not accountable for the rents, but retains them for payment of his interest, and takes the hazard of them in all events; or as it is expressed in the Act of Parliament 1661 c. 62, "where the creditor wadsetter hath the hazard of fruits, tenants, war, and others." The improper is that wadset whereby the wadsetter is liable to account for the rents, and to impute the surplus, over paying the interest of the debt, in extinction *pro tanto* of the principal sum. The former, therefore, is a right of property, the latter a mere right in security, and so ineffectual to give a right to vote.

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The Court of Freeholders having dismissed the respondent's claim, he brought a petition and complaint to the Court, complaining of that sentence. The Court pronounced this interlocutor:—"Find that the complainer's right is a proper wadset, and the lands therein mentioned are properly conveyed, as well those whereof the feu-rights of the vassals were excepted, as those whereof the property was conveyed? Find that the lands were regularly divided, and the valuation of the half thereof made in the year 1740, and was confirmed by a subsequent meeting of the Commissioners of Supply in the year 1753, and therefore repel the objections to the complainer's title as to these points.

Against this interlocutor the present appeal was

brought by the appellant, the party objecting to the respondent's title.

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Pleaded for the Appellant:—The greatest part of this wadset consists of feu-duties; and the Act 1681 gives the right of voting only to *proper wadsets of lands*. The difference between proper and improper wadsets is, that the person in right of a proper wadset takes the whole profits to his own use, without any kind of account. In other words, the use of the land for the use of the money. During the subsistence of the wadset, he is absolute owner until the redemption agreed on take place, upon repayment of the money. Whereas the improper wadsetter receives indeed the profits, but is accountable for the surplus beyond what pays his interest; and such surplus goes *pro tanto*, in extinction of principal. His estate, therefore, is not absolute or certain, and the act 1681 confines the right of voting to a proper wadsetter, which the respondent is not, upon the principle that such wadsetter is an owner, and infeft in a fixed durable estate.

Pleaded for the Respondent:—The respondent's title is a proper wadset, as he has taken the rents of lands for the use of the money, which is the proper characteristic of a proper wadset. He has no demand of interest from the debtor, and he is liable to every hazard of diminution of the fruits by tenants, war, and troubles which, according to the Act 1661, constitute a proper wadset. What constitutes an improper wadset is where the creditor has his interest secured to him by his debtor, whatever should befall of the rents. The creditor may agree to pay public burdens—may reserve to himself any particular casualty, yet those stipulations do not alter the essential nature of the improper wadset, and convert

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it into a proper one; nor does it make any difference that the wadset is part over feu-duties, and not entirely of lands.

After hearing counsel, it was

Ordered and adjudged that the appeal be dismissed, and that the interlocutor complained of be, and the same is hereby affirmed.

For the Appellant, *A. Hume Campbell, Al. Forrester.*

For the Respondent, *Wm. Grant, W. Murray.*

HIS MAJESTY'S ADVOCATE, - - - *Appellant.*
 WILLIAM URQUHART of Meldrum, Esq., *Respondent.*

House of Lords, *6th February, 1755.*

DECREE OF SALE.—PATRONAGE.—TESTING CLAUSE.—SASINE.

—1st. A decree of sale does not cut off the right of or exclude parties not called in the ranking and sale; and the Act 1695 does not protect a purchaser in such a case. 2d. A contract as to patronage sustained, though the witnesses' designations to the subscription of one of the contracting parties were not inserted in the body of the deed. 3d. Found no objection to a sasine that the notary's docquet did not mention the particular symbols used in passing infestment, or bear the notary's motto affixed to his signature, the sasine being eighty years old, and possession having followed upon it.

No. 108. THE respondent believing that under the titles of his estate of Cromarty, purchased at a judicial sale, he had good right to the patronage of the church of Cromarty, on the occasion of a vacancy occurring presented a minister to the vacant benefice. But his Majesty's Advocate for his Majesty's interest having disputed this claim, and stated the Crown's pre-