

Satter; and he hath right to the rent of the lands during that time 7 Decemb. 1631 Grierison contra Gordon junct. 8 Decemb. 1671 Forrest contra Brownlie 29 novemb. 1672 D. Buccleugh contra L. Ghiristane Stair lib 59. If consignation was made in the hand of the Clerk of the Bills or Clerk of the process, thro the wadsetters faulty Refusal to Renounce or accept the Money, he the wadsetter is liable for the Expence due the Clerk for Busi- and Delivery: But if any favour ex officio be Indulged to the Receiver, he must bear that Expence, Stair lib. If the Declarator be obtained against an apparent heir, he cannot claim the Money but it must Remain Consigned, till he or some other be Enticed and Infeft and thereby in case to Renounce the Wadset Infeftment, who upon Renouncing will get up the sums Consigned January 1665 Campbell contra Brysons Stuart answers to Dirlot. Doubts the heir and Executor.

The use of the order of Redemption may pass from its origin before Declarator, or before the Wadsetter hath owned the Consignation by Renunciation, or grant of Redemption of the Wadset or by purchasing for the Consigned Money, 21 June 1626 Murray contra Dishing-ton 21 January 1673 Nicol contra Laurie & al. A Declarator nihil nisi juris tribut; Declares only the order to have been sufficient a 6 Initio. The Reason is, because till there be either a Sentence of Declarator, or of Voluntary grant of Redemption, non Constet that the order will be sustained by the Lords. But after Declarator or the Wadsetters accepting the Consignation in Manner aforesaid, the Use of the order cannot pass from it, and it is no longer Ambulatory: The Declarator having then first Quasitum to the Consigned Money. The Reserver uplifting the Consigned Money, is not Understood to be a passing from the order of Redemption 8 Decemb. 1671 Forrest contra Brownlie 29 Novemb. 1672 D. Buccleugh contra L. Ghiristane.

The sum for which a wadset was given, is still heiritable before Declarator, or before the Wadsetter hath owned the Consignation, and goes to his heirs 21 June 1626 Murray contra Dishing-ton 21 January 1673 Nicol contra Laurie 18 June 1675 L. Leys contra Forbes 8 Feb. 1681 Dumbarton contra M'Lenzie

M'Lenzie Stair lib. 2 Tit. 154 Stuart answers to Dirlot. Doubts Tit. Redemption heiritable and Moveable. The Reasons are because 1st till then the Reserver may at his pleasure uplift the Consigned Money which therefore doth not belong to the Wadsetter. 2nd it is a principle that no Man's right can be altered without his own Consent, or a Authority of Law: and if simple uplifting an order of Redemption, did make the sum for which a wadset is granted Moveable, it were in his Reserver's power, without the Authority of a Judge, or the Wadsetters Consent, to Render his heiritable sum Moveable; and so contrary to his Inclination make them fall to his Executors, his Heir, or the Fiske. Which is so far contrary to our Law, that even the Use of an order of Redemption, by entering in possession of the wadset lands, the Consigned Money remains heiritable at all times till a Declarator 21 June 1626 Murray contra Dishing-ton. Because here there was nothing yet done but his own fact to alter the Nature of another Man's right supra page. But the Consigned Money becomes Moveable, either by the Wadsetters Declarator, his Discharge of the Consignation, or by Declarator in his life time, so that the Reserver cannot after ward uplift the Money at any time 1673 Nicol contra Laurie, and it belongs to the Wadsetter, and not uplifted by him to his Executors; and his Heir is obliged to Renounce, tho he get not the Money, nor simple Signification by a Feitor makes his heiritable sum Moveable, nor may pass from his Heir Right and Make use of the personal obligation when he thinks fit: tho it be not in his power of the Debitors to be kept by his using permission to the Executor to same and receive his Money. An order of Redemption of a wadset granted to a Man and his Wife the longest lives of them two, and the heirs of the Marriage being issue are Decreed against the husband; The fee of the Consigned Money ^{should fall} to the husband's Executors, with the burden of the heirds liferent, Stuart answers to Dirlot. Doubts Tit. heir and Executor 8 Tit. Money Consigned for Redemption. But a Declarator of Redemption obtained after the Wadsetters death, doth not Render the sum Moveable as to Executors of the Wadsetter but it Remains heiritable 18 June 1675 L. Leys contra Forbes. and belongs to his heirs. Because the Wadset being a real right at the Wadsetters death, his heir and not his Executors had the only Right