

of appraisings by Exception or Reply, yet a Wadsetters Indem-
nification is Receivable only by Action of Declarator of Copying
of the Wadset by Satisfaction.

A Wadset is Extinguished by Mutual Consent, when the
Wadsetter Renounces it Voluntarily, upon payment Made by
the Reverser. Which Renunciation is termed a Voluntary Resignation,
and must be Recorded as seifint within 60 Days after date
Act 26. Par. 22. J. 6 June 1611 Par. 3 Ch. 2. The Assignation
to orders of Redemption, need not be Registered. 29 July 1623
Marshall contra Keith upon which a Declarator will Evacuate
the Wadset even against Singular Successors who cannot know
of such an order or Declarator from any Register: Whereby
purchasers seem not to be secure. Such a Voluntary Resignation
upon an order used against the Wadsetter without process, was
sustained to Exclude a base life rent Infestment granted by
him, which the Reverser was not obliged to know, albeit
was upon Record in the Register 27 July 1665 Hamilton
contra Gerant. But then base Infestments require possession
to complete them, which now they do not Act 13. Sep. 4th
W. & M. A Wadset upon which no Infestment followed, is
taken away by a simple Discharge or Renunciation. But
if the Reverser be not Infest, nor heir to a person Infest in
lands Wadsetted, as when Reversions are carried by Assignat
apprising or adjudication to persons never Infest, the Wadset
Must be conveyed to him by the Wadsetter. Where the Wadset-
ter is Infest base, he must Resign and Remanent them, in the
hands of the Disposer as his Superior: Whereupon the Dis-
poser needs not to be Infest de novo more than any other
Superior acquiring the property. But if the Wadsetter is
publicly Infest, he must Resign in favour in the Superior's
hand. Which Resignation, if the Reversion be Ingrossed into
Wadset Infestment granted by the Superior, doth Revert to
the Grantor of the Wadset in his own place as Vassal. But
if the Reversion be not Ingrossed, the Grantor of the
Wadset may charge the Superior upon his letter of
Regress, to Infest him for Reestablishing the Right in
his

his person: or the Superior may, if he will, without a charge
Reinfect the Grantor of the Wadset.

Sect. 2.

Of Dispositions containing a reserved faculty to Alter.
Where Dispositions contain a reserved faculty to Alter, in
favour of the Disposer without mentioning of his heirs, he may
Exercise the faculty even after the land is sold in non-entry
or ward, by the Death of him to whom they were Disposed; and
thereby determine and put an end to such Casualties to the
prejudice of the Superior, who cannot Complain, seeing he accepted
Resignation on the Disposition with such a Reserve, Stuart
Answers to Dirlot. Doubts yet, faculty reserved to Disposer.
The faculty may be also adjudged by the Disposer's Creditors. Nay,
tho' the Receiver of the Disposition were forfeited, the reserved
faculty Impours the Disposer to Dispose de novo unless he
be obstructed by the quinquennial prescription Stuart ibid.
But Sir James Stuart (ibid) thinks, that if a Man should
Dispose lands to another Reserving a faculty to himself, this
Reserved faculty dies with himself if not exercised before his
Death. And the Lord Stair (Inst lib. 2. Tit. 6. § 10) seems to be
of the same Opinion, when he says, that a Conjunct fee
to a Wife with an express power to her, and not also to
her heirs, to Dispose, is Considered only as a personal
faculty, which fails with herself. The Lords found in
that the Earl of Dumfermling as heir to the Lady Fairclough
his Mother had right to Execute a power to Dispose of the
half of the Earl of Fairclough's Conjunct estate given to
the Lady without mention of her heirs, tho' she never
that power 27 June 1676. E. Dumfermling contra E. Fairclough.
But this Decision Sir James Stuart looks upon as hard, and it
was truly an Extraordinarily Circumstantiated Case.
It being usual in Dispositions, Specially to those granted to
friends for love and favour, to Reserve a power and faculty
to alter, Dispose, Redeem or burden, at any time during the
Disposer's life, sometimes with and sometimes without the
Words Etiam in articulo Mortis, or In leilo Revertuntis
On Death &c. Queritur whether life in such a Case should
be.