

the common debtor's expense, and not by the donatar. THE LORDS found, by plurality, the property of these stones belonged to the donatar, and not to the real right, not being pointed. Then it was started, if upon their returning to the Privy Council after this decision of the Lords of Session, there would be ground to fine the Colonel for his riotous obstructing the carrying them away, and occasioning so considerable a loss and damage to Ochiltree. Some said *malitiis non est indulgendum*; others thought the question anent the property being nice, and, *in ipsis juris apicibus*, the Colonel's opposition was to be excused.

No 6.

*Fol. Dic. v. 2. p. 353. Fountainball, v. 2. p. 350.*

1715. July 19.

MILN *against* LADY GALRAW.

FOUND, that a Lady's intromissions with the rents of her deceased husband's lands, for aliment and education of the apparent heir, were *bona fide*, till she was interrupted by a citation in an action for mails and duties against the tenants at the instance of an adjudger.

No 7.

*Fol. Dic. v. 2. p. 353. Bruce.*

\* \* \* This case is No 40. p. 1759, *voce* BONA FIDE CONSUMPTION.

## S E C T. II.

Real Security, after what manner loofed.

1626. June 21.

MURRAY *against* DISHINGTON and SCOT.

SIR JOHN MURRAY of Philiphaugh having paid, as cautioner for Sir Thomas Dishington, some sums of money, for his relief thereof he arrested in Sir William Scott's hand some monies addebted by the said Sir William to the said Sir Thomas, as resting of the price of the lands of Ardress, and upon the arrestment pursues Sir William to make the same furthcoming to him. The money was alleged by Sir William and Sir Thomas defenders, not to be subject to arrestment, seeing it was immoveable, being employed upon land to the said Sir Thomas his behoof, to whom the said Sir William had given charter and sasine for his security of the said money. It was *answered* by the pursuer, that that infestment was under reversion, and that Sir William Scot had used an order of redemption, and made consignation of the money, whereupon the lands were redeemable; likeas, after the consignation, he had appre-

No 8.  
Money consigned in the order of redemption of a wadset, was not found moveable, because the order might be passed from, or might not be sustained.

No 8.

hended possession of the wadset lands, the same being before that order of redemption possessed by the said Sir Thomas himself; and the money being consigned, became moveable, and was arrestable after the said consignment. Notwithstanding of this reply, the money was found not to be moveable, nor subject to arrestment, albeit that the preceding order was used, and the money consigned before the arrestment, except that after either decret of redemption had followed upon that order, or else that the wadsetter had renounced and granted the lands lawfully redeemed; and the LORDS found, that without a grant of redemption, or a lawful sentence, the money became not moveable, nor subject to arrestment as said is;—albeit it was also *replied*, that this tended greatly to the prejudice of true and lawful creditors, who by the collusion betwixt these parties being conjunct, viz. father-in-law and good-son, they might make a redemption at their pleasure, and use it, or not use it, as they found expedient, which could not be known to the creditor; likeas, that collusion appeared the more probable in this case, where after the consignment, the consigner acquired real possession of a redeemed lands, which he had not before;—which answer was not respected as said is, except *positive* it had been alleged, that there was either a lawful grant of redemption, or a sentence, seeing either the consigner might pass from from the order, or the order might not be sustained by the Lords;—in either of the which cases, the money returned to the nature again wherein it was before the order; for reversions are counted among things immoveable, whereof no disposition can be made upon death-bed; but after the declarator, the money which before declarator is reputed also immoveable, becomes then to be moveable, and pertains to the executors of the defunct, and not to his heir;—and so affirms Craig, lib. 2. Feud. fol. 60, but in the same second book, fol. 251, and 252\*, he says, that if any man die in the wadset of land that is under reversion, the land being redeemed, the wadsetter's wife will have the use of her third of that money, whereupon it was redeemable, upon caution to make it forthcoming to the heir after her decease; but if any tacks be after the redemption, she will have no part thereof, but the same pertain only to the heir; by the which it would appear rather that the money is not moveable, seeing the relict hath the liferent of her third thereof; but it may be answered, that the redemption there, is made after the husband's decease.

In this same process, the Lords found, that a sum appointed to be paid by the debtor to the creditor, (as Sir William was obliged in this case to Sir Thomas) where the debtor was obliged to pay the sum to his creditor, to the effect the same might be employed by the creditor upon land, for warrandice of the land bought by him, who was not obliged for the money to him to whom it was obliged to be paid, yet notwithstanding of that destination, it remained moveable, and might be arrested by his creditor, to whom the money was obliged to be paid, where the money was not employed upon land before the arrestment, conform to that destination, seeing the party who was obliged to

\* See L. 2. Dig. 6. De Reversionibus.

pay, was simply obliged, and was not subject in any heritable condition or obligation, nor holden thereby to pay annual, but when the payment was made either to the party to whom he was bound, or to his creditor artester, or any other. So the LORDS found it was affected with the same condition, and ought to be employed upon land for the parties' warrandice; and thereafter found, that this artester, for his debt due to him, had right to the sum as Sir Thomas had, and might seek the same, but that he ought to employ it upon land for warrandice to Sir William, conform to the destination and condition of his bond.

Act. *Lermonth & Cunningham.*

Alt. *Stuart & Nicolson.*

Clerk, *Gibson.*

*Fol. Dic. v. 4. p. 253. Durie, p. 203.*

1642. February 16. VEITCH against TENANTS and POSSESSORS.

KATHARINE VEITCH being served heir and kened to a terce of some lands, wherein her umquhile husband died infest redeemable, pursues for the duties of the said lands, intromitted with by Veitch of Dawick, divers years since the death of her husband. And the defenders *alleging*, that before the pursuer's husband's decease, the sums whereupon the lands were redeemable, were charged for to be paid in the defunct's lifetime, so that the sums were thereby moveable, which makes the terce of the lands to cease; this allegiance was repelled, because no redemption followed, nor renunciation, nor other deed upon that charge, and the defunct died infest, and undenuded. And the defender *duplicing*, that after the defunct's decease, his son and his tutors renounced that right of wadset; and the pursuer *answering*, that that renunciation done by his tutors, ought not to be respected, not being done by the father in his lifetime, who made the money moveable; the LORDS found the renunciation made by the tutors and minor relevant to elide this pursuit, to exclude the tercer, seeing the wadset was redeemable, and the renunciation made was sustained, being dependent upon a preceding necessary ground of reversion, albeit there was no declarator of redemption; but because the pursuer alleged collusion done betwixt the tutors to her prejudice, the matter was ordained to be further heard.

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 353. Durie, p. 894.*

1673. January 21.

NICOL against LAWRIE.

THERE being a sum due to unquhile Henry Pirie by bond, containing a provision for infestment in certain lands, and a reversion upon the premonition by

No 8.

No 9

A Lady kened to her terce of lands, in which her husband was, infest, redeemable, was found to continue to have right, although the sums had been charged for by her husband, but no redemption nor renunciation had followed. But she was afterwards disappointed in consequence of a renunciation by the tutors of the husband's heir.

No 10.

Consignation by the debtor being ambulatory, as it was in his