

1696. July 16. LORD BARGENY against FERGUSON of Kilkerran.

CROGERIE reported a case between the Lord Bargeny and Ferguson of Kilkerran. My Lord refused to accept the money owing, because, by the reversion granted by his father to Kilkerran, it was expressly provided, it should be only redeemable 'with his own proper money,' and this was borrowed money; and being a favour he gave him, it must be taken precisely in the terms as it stands, and as it was given. *Alleged*, By the conception of the writ, there appears no formal design to bind him up in such terms; for that gloss would plainly render the favour elusory; and money, when borrowed, becomes the receiver's; *in omni mutuo inest alienatio, et rei transfert dominium*, and so becoming *dominus pecuniæ mutuatae*, the payment was still made with his own money. THE LORDS found no specialty or restriction laid on the debtor in this case, but that he might redeem from my Lord with any money, *cui nihil deerat cum suum recepit*, unless it had been more clearly cautioned and provided for.

*Fountainhall, v. 1. p. 729.*

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1697. December 29.

LIVINGSTON of Westquarter against The EARL of CALANDER.

LAUDERDALE reported James Livingston of Westquarter against the Earl of Calander. It was a declarator of an order of redemption of a wadset made by his father to the Earl's predecessor. *Alleged*, The instrument of premonition and consignation was null, for it did not bear six knocks given, nor to whom the copy was delivered; *2do*, It mentions not the production of the principal reversion, nor of the procuratory and warrant to require the wadsetter to accept his money. *Answered*, The act of Parliament does indeed require six knocks in the execution of summonses, but neither law nor practice has extended it to premonitions; and as to the copy, the instrument bears it was delivered, and in fortification he offers to prove the doors were open, and it was given to the Earl's governor, *et ea interpretatio sumenda est ut actus potius valeat quam pereat*. As to the second, there was no necessity to shew his procuratory and mandate, unless it had been questioned, and a sight of it demanded, as was found, 18th January 1662, Veitch *contra* Lyel of Bassenden, No 7. p. 12266.; and for the principal reversion, he was not master of it, but he had a copy, which has been sustained by the Lords, 19th February 1662, Children of Wolmet against Mr Mark Ker, No 41. p. 13463.; and 17th February 1663, Colonel Montgomery against the Heirs of Robert Haliburton, No 42. p. 13463. THE LORDS sustained the order of redemption, and granted him a diligence for recovering the principal reversion or wadset where it is engrossed; but in respect of the

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The objection, that the instrument of premonition did not bear production of a procuratory was repelled, a sight of it not having been demanded.