

## No 3.

To which of the parties does the consigned money belong?

1739. *June 26.*TUACH *against* M'KENZIE.

WHERE money is consigned by a reverser, it is considered to be the absolute property of neither reverser nor wadsetter, till the event of the declarator, but belongs conditionally to the one or the other, as the declarator shall proceed or not. Upon which principle it was found, that an arrestment of money consigned by a creditor of the consigner, did not so affect the consigned money, as to preclude the reverser from proceeding in his declarator of redemption.

A consideration of equity also here concurs, that it often happens that consigned money is not the property of the consigner, but is advanced by a friend in order to prevent the expiry of a reversion; and it would be very hard if that money could be run away with by the reverser's personal creditor arresting, so as to prevent the effect of his proceeding in his declarator of redemption.

*Kilkerran, (CONSIGNATION.) No 2. p. 147.*

## No 4.

1780. *February 11.*CAMPBELL *against* SINCLAIR.

A PURCHASER of an heritable subject having called all the creditors of the seller in a multiplepinding, was desirous of consigning the price, which, till certain incumbrances were purged, and disputes among the creditors adjusted, he could not safely pay. THE LORDS found, That if he did consign, it behoved him to make a total consignment, and not a partial one. *See APPENDIX.*

*Fol. Dic. v. 3. p. 164.*

1794. *June 21.*The TRUSTEE for the Creditors of Robert Rae, *against* ALEXANDER GORDON.

## No 5.

Consignation in the hands of a clerk of court may be proved by witnesses.

IN an action at the instance of the Trustee for the Creditors of Robert Rae, before the Stewart of Kirkcudbright, against John Milligan, he was ordered to consign L. 46 : 14 : 3 in the hands of the clerk of court.

It being afterwards disputed, how far this order had been obeyed, Milligan contended, That he had consigned L. 41 with the depute stewart-clerk, but had retained the rest on account of a debt due to him by Robert Rae.

The depute stewart-clerk had by this time died bankrupt, but the principal stewart-clerk was made a party to the action, and Milligan offered to prove by witnesses, that the consignment had taken place. A proof before answer was accordingly allowed, from which the Stewart, satisfied that Milligan's averment was true, found him liable only for the balance which he had retained in his own possession.