

No 83.

On report of Lord Elchies, the LORDS advised him to find the tack assignable.

*Fol. Dic. v. 4. p. 76. D. Falconer, v. 1. No 226. p. 310.*

1748. June 28.

NEILL against ANDREWS.

No 84.

A power to a seller to redeem within a limited time, without mentioning assignees, is not assignable.

WILLIAM NEILL in Prestick disposed a small piece of ground to Thomas Andrews, smith in Monkton, who, of the same date, by a letter addressed to him, not holograph, promised "that the seller should be welcome to redeem from him, upon payment of the prime cost, interest, and charges laid out by the disponee to him and others, within seven years after the date."

William Neill made an offer of redemption, and insisted in a declarator before the Sheriff, during which he received some part of the price which had not been paid; and this the Sheriff found to be a passing from the redemption.

He afterwards disposed his right to James his brother, and died; and James insisted in a declarator of redemption before the LORDS of Session, to which it was *objected*, That a right of reversion could not be constituted by a missive letter not holograph, though the subscription should afterwards be acknowledged; but on this no determination was given.

*2dly*, Reversions were *stricti juris*, and did not extend to assignees when not expressed; Stair, Book 2. Tit. 10. § 7. and Book 3. Tit. 1. § 16.

*Answered*, A minute of agreement receives an ampler construction than a formal executed deed, being interpreted *secundum quod plerumque fit*; and if this is so in minutes, much more ought it to hold in interpreting a missive.

THE LORDS found the faculty of redemption did not belong to an assignee.

Reporter, *Kilkerran*.Act. *Boswell*.Alt. *Lockhart*.

*Fol. Dic. v. 4. p. 76. D. Falconer, No 266. p. 358.*

\*\*\* Kilkerran reports this case:

WILLIAM NEILL, proprietor of a small bit of ground in the parish of Monkton, disposed the same to Thomas Andrew in 1738. The disposition did not express the particular price paid, but it was admitted to have been 22 years purchase.

Of the date of the disposition, there is a missive letter from Andrew to William Neill, bearing, that he should be welcome to redeem the land upon payment of the prime cost and charges at any time within seven years.

This letter of reversion William Neill assigned to his brother James in 1744, who before he should provide money to consign upon an order of redemption,

brought a process against Andrew for having it found and declared, that the land was redeemable in terms of the missive letter.

No 86.

The defences made for Andrew were, That the letter not being holograph was not probative. *2dly*, *Esto* it were, the reversion being only personal to William Neill, was not assignable.

Before answer to the *first*, The Ordinary having appointed Andrew to confess or deny whether the subscription at the missive was not his subscription, he acknowledged the subscription; but added, that the communing which the missive was intended to express was truly no more than this, that William Neill himself should have power to redeem within the seven years if his circumstances would allow it; and thereupon *pleaded, 1mo*, That the acknowledgement of the subscription did not render the unholograph letter obligatory, and that therefore he was no farther bound than so far as he had acknowledged the communing and agreement, viz. That the reversion ~~was~~ limited to William Neill himself, and not to go to assignees. *2dly*, *Supposing* the missive to become obligatory by the acknowledgement of the subscription, as the reversion was not expressly granted to assignees, it was not of its nature assignable.

The Ordinary having reported the case, the LORDS were clear, that by the acknowledgement of the subscription, the letter became obligatory, agreeable to what had been found 20th December 1746, *Foggo contra Milliken, voce WRIT*: But then as it had been admitted that the price had been 22 years purchase, and that therefore the bargain could not have been a wadset but a sale, they were of opinion the reversion was personal to the seller: That Lord Stair was in the right when he says that a disposition granted to a man without mentioning his heirs, is nevertheless presumed to be to him and his heirs; but that a reversion granted to a man without adding his heirs is presumed to be to himself only.

Accordingly, the LORDS found, "That the reversion could not be assigned, and assoilzied the defender."

A separate defence might also have been pleaded, that the seven years were now elapsed without using the order of redemption; but there was no occasion for it.

*Kilkerran*, (PERSONAL and TRANSMISSIBLE.) No 4. p. 398.

1756. November 24.

WILLIAM SANDERSON *against* The MARQUIS of TWEEDDALE and JOHN CARFRAE.

THE Marquis of Tweeddale granted a lease of the farm of Gamilstone to Walter Hay, "his heirs, executors, and assignees whatever, of no higher degree than himself, and with whom the Marquis shall be content and accept of allennarly." This lease was to endure for forty-five years and a life.

No 87.

A lease granted  
to a man,  
' his heirs,  
' executors,  
' and assignees.