verted into a right of property, but remaining a right in security, which is plainly a right of wadset for ever. Tweeddale on the other hand insisted that it was a sale.

"The Lords found, That, by the conception of the disposition in question, and of the said writing relative thereto, the said disposition was granted by the defender, and accepted by the pursuer *in solutum* of the debt; but redeemable upon payment of the principal sum, interest, and expenses, being recovered by intromission with the rents, or payment being made by the defender."

A wadset may be constituted without containing an express clause of requisition, or even without mentioning the word wadset *in græmio* of the deed, provided that from other clauses it sufficiently appears that such deed was intended. Upon this ground it was, that the judgment of the Court proceeded in the case of *Scotstarvet* against *The Earl of Balcarras*, decided 1762.

WARRANDICE.

1777. *February* 7. LIVINGSTON of WESTQUARTER'S HEIR *against* LORD NAPIER.

THE estate of Westquarter, having been sold by James Livingston of Westquarter to Mr William Drummond, *anno* 1728, was, by Mr Drummond, sold to Lord Napier with absolute warrandice. The heir of Livingston, having made up titles, brought a reduction of the sale to Lord Napier, as contrary to a tailyie, and thereupon evicted the estate from Lord Napier, *anno* 1762. The Lord Napier thereupon pursued Mr Drummond's heirs upon the warrandice.

The Lords pronounced this interlocutor, 1st August 1776:—"Find that Mrs Margaret Drummond, and the other representatives of Mr William Drummond, are liable to Lord Napier in the payment of the value of the estate of Edinbellie, purchased by Mr Drummond from Mr Livingston,—sold by Mr Drummond to Lord Napier,—and now evicted from Lord Napier,—as the same stood at the time of eviction, with interest thereof from the time when Lord Napier ceded the possession thereof to Mr Livingston, and in time coming while payment: But find, that, by the law of Scotland, and notwithstanding of Lord Napier's ceding the possession as aforesaid, Mrs Margaret Drummond and the other representatives of Mr William Drummond are entitled to recover from Mr Livingston all meliorations on said estate now evicted, made either by Mr William Drummond or Lord Napier, posterior to their purchases. And, in order to ascertain the value of the estate evicted, appoint the parties, betwixt and Tuesday next, to say whether they, or any of them, desire further proof of the rental and value of the said estate, as the same stood at the time of eviction, if that can be had, or as the same stands now. And, as to meliorations,

appoint the procurators for Lord Napier to print, and give into the boxes also betwixt and Tuesday next, a condescendence thereof, so far as done by him; and supersede further procedure until this is done."

Lord Napier's procurators gave in the above condescendence; and afterwards, on the 10th of August 1776, craved interim decreet for L.2100 in part payment, and to account of the value of the lands evicted, found due by the former interlocutor. The Lords ordained the condescendence to be answered to the 12th of October, but gave the interim decreet as at Martinmas next.

In this decision the Lords were unanimous that the warrandice reached to the value of the lands evicted, as the same stood at the time of eviction. It is true, scarce more than one or two decisions could be quoted on this point: yet the case was so clear on principles, that it needed no decision.

See Dict., Vol. 2, p. 519, *22d February* 1717, *Houston* against *Corbet;* and Clerk Home's Decisions, p. 293; also observed by Kilkerran, voce *Warrandice.*

They were also of opinion that meliorations fell to be deducted from the warrandice, in terms of Lord Bankton's opinion, *B.* 1, *tit.* 19, § 25; and that the buyer is entitled thereto before he quit the possession. But in this case the singularity was, That Lord Napier, being pursued by Livingston to remove from the possession, did betake himself to his warrandice against the heirs of Drummond, and removed accordingly without any remonstrance on the part of Drummond. This he did judicially, at a calling before the Ordinary, parties present; and in which Mr Drummond's representatives acquiesced. This appeared an oversight on their part: they ought to have insisted, with Lord Napier, either to have kept the possession or to have ceded it to them. Whereas now they had rendered all claims for meliorations doubtful, and at any rate had only action, not retention, against Livingston for the meliorations, and he was in doubtful circumstances.

At pronouncing this interlocutor the Court took it for granted, and proceeded on the supposition that Mr Livingston was a party in the process, otherways they never would have pronounced an interlocutor fixing any thing against him. The case was, that Livingston having raised a process of removing against Lord Napier, this had been conjoined with the other process on the warrandice at Lord Napier's instance against the representatives of Mr William Drummond. But no sooner had Lord Napier ceded the possession, as already mentioned, than Livingston extracted the decreet of removing against Lord Napier, and took no farther care of it; while all the after proceedings were solely between Lord Napier and Mr Drummond's heirs upon the warrandice. Finding however an interlocutor pronounced containing conclusions against him as to recovery of meliorations, Mr Livingston petitioned the Court, who admitted him for his interest; and then he gave in a memorial, contending that Mr Drummond's heirs had no claim for meliorations against him, either as made by Lord Napier or by themselves. That, in fact, none had been made, and though made, could not be allowed, as Mr Drummond had been found a *mala fide* purchaser, &c. At any rate, if the Lords were inclined to grant a proof in which he was concerned, he craved that it should be a proof before answer, in which all these questions should be reserved.

This memorial, together with a reclaiming petition for Mr Drummond's representatives, reclaiming against the interlocutor above recited, and answers for Lord Napier's trustees, having been advised; "the Lords, 7th February 1777, adhered to their former interlocutor, so far as it found the representatives liable to Lord Napier's trustees in payment of the value of the estate of Edinbelly evicted from Lord Napier as it stood at the time of eviction; and this, notwithstanding of Lord Napier's having ceded possession thereof to Mr Livingston, a measure in which it appeared that Mr Drummond's heirs did judicially acquiesce." In this they were unanimous.

They further found Mr Livingston a party in the process sufficiently to end all the present questions agitated between the parties. But, before further procedure, and before answer, they granted to them all a full proof of the state, condition, rental, and value of the estate of Edinbelly, as it stood at the period following, *viz.* as it stood at the period of Mr Drummond's purchase, *anno* 1728; of the eviction from Lord Napier, *anno* 1762; and of Lord Napier's ceding the possession to Mr Livingston, *anno* 1773; and of all meliorations and improvements made on said estate, either by Mr Drummond or Lord Napier, betwixt the first and last of these periods: and granted commission and diligence.

By this interlocutor, therefore, only two points were determined, as to the effect of the warrandice, and that of Lord Napier's ceding the possession to Livingston *quoad* the warrandice. But, as to the claim for meliorations, and how far Lord Napier's ceding the possession affected that, every thing was kept open and entire.

WRECK.

1762. The MAGISTRATES of ABERDEEN *against* DUNNET.

IN all cases of wreck, or where a ship is stranded, or deserted by the crew, the Admiral and his deputes have the sole right of keeping and intromitting therewith, Falc., 2, No. 200. Arg.:—The quantum of salvage was, in two cases, *anno* 1749, struck by the Admiral at one-fifth part, *22d September* 1749, *Brandt and Factor* against *Earl of Findlater*; *19th December* 1749, *Brandt and Factor* against *Magistrates of Aberdeen*. But, in a case decided *anno* 1762, *Magistrates of Aberdeen* against *Dunnet*, the Lords restricted it to his expense, and what was a reasonable gratification for his trouble.

In the famous case of the Dutch East India ship, wrecked on the coast of Barra, *anno* 1728, it was not disputed by the Dutch proprietors that salvage was due; and accordingly, in that case, the Admiral decerned for £3000 in name of salvage, and for £8000 of expenses.