

right be redeemable from him by the defunct's creditors within ten years after his acquisition of it, by 62d Act Parliament 1661; for that act seems only to allow the redeeming of such rights as he shall acquire with money; for it speaks of repaying him the sums for which he bought and purchased it; and the case of donation, (as being infrequent in this uncharitable age,) seems not to be provided for, but to be a *casus non cogitatus*, wherein the statute is out, and which was not thought on; and so *casus omissus habetur pro expresse et de industria omissis*; and *statuta*, being *strictissimi juris*, cannot be extended *de casu in casum*. Some think the act, though it ought, yet in strictness it will not reach this case. See some questions at the end of February 1680, and Stair, *tit. 24*; where an heir getting a comprising *gratis* must be paid the whole sums.

A mother giving her daughter a tocher, and taking from her a discharge of all she can ask or crave, by her father or goodsire's decease, as heir to them, (there being only daughters,) or any other manner of way; *quæ*. if the accepting of this tocher, and renouncing the succession in manner foresaid, will be a *gestio pro hærede*, and infer a passive title, yea or not. Some affirm it will, because she gets money to do it. But this were exceeding hard. How far an apparent heir, renouncing to be heir for money, is liable, see Stair, *tit. 29*.

What if an apparent heir renounce the reversion of the apprising, or his right of the lands appraised, and get a sum of money for it. The Lords have taken a very rational and just way in this; for, if the legal of the apprising was not expired, or if there was any right to the lands standing in the apparent heir's person, and he quit that for money, then it is a behaviour; but if the legal be expired, and he gets it merely for his kindness and good will, that binds no representation on him. See Dury, *27th January 1636, Straiton*; *10th February 1642, Johnston*.
Vol. I. Page 44.

ANENT EQUALITY OF PUNISHMENTS.

DOCTOR Jermyn, in his Commentary on the Proverbs, c. 16, v. 11, cites to this purpose an apposite saying of St Chrysostom on the 95th Psalm:—*Cum punit Deus trutinat ultionem, ut congruens sit delictis*. And the English *Magna Charta, anno 9 Henr. III. c. 14*,—"No man should be amerced but after the quantity of his offence." And Draco's laws, to this hour, stand condemned for making one punishment for all faults; though the Stoics made all errors equal.
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1679. February 28.

ANENT RECOGNITION.

ROBERT Graham, Provost of Dumfries, a man in great reputation for wealth as a drover, being broken, this day his escheat is gifted to the Earl of Dundonald, the President, Craigie, &c. *primo loco*, for payment of their debts. They also got the gift of the recognition of his lands, which he had made to recognosce, by taking a base infestment after he was bankrupt; which will occasion a pretty debate in the declarator of recognition, whether or no such a fraudulent deed can make the lands recognize, so as to prejudice his creditors; and if this will

fall under the compass of the 18th Act Parliament 1621. He could not have disposed validly then ; *ergo*, neither lose them by delinquency, *tantum contrahendo quantum delinquendo*. Many will be great losers by him. See Durie, 10th March 1627, *L. Balmerino* ; 16th Dec. 1680, *Hay*. Vol. I. Page 45.

ANENT a SKIPPER'S LIABILITY FOR DAMAGED GOODS.

If a shipmaster suffer merchant-goods, as cloths or the like, to be eaten by rats, he will be liable to the merchant for the damage, unless he prove he had cats in his ship. This is expressly determined by Cristoph. Crusius *de Judiciis Delictorum*, p. 421. See also B. Straccha *de Nautis, &c.* If their goods be burnt in the ship by negligence, or spoiled with water, or rent and torn by stowing too much, the skipper is liable *ex edicto, Nautæ, caupones, stabularii* ; and Act 14, Parl. 2, J. III. See 7th Nov. 1677, *Laurie* ; and Stair, *tit. 10*. Vol. I. Page 45.

ANENT the EFFECT of BACK-BONDS as to SUCCESSION in MOVEABLES.

WHERE a back-bond is granted by an appriser, declaring so much of the sums of the apprising to be to the behoof of another,—if that other, to whom the back-bond is granted, dies, *quær.* whether it falls to his heir or executor ; and must be confirmed, as being moveable, and a mere personal obligation to denude, or if it must be conveyed by a general service, as surrogated in place of an heritable right, and so *illius naturam assumit, induit et sapit*. Stair, *tit. 20*, compares a back-bond with a reversion ; now reversions are heritable. Vol. I. Page 46.

1679. February 28. SETON of PITMEDDEN against SETON of MINNAS.

IN Pitmedden his action against Seton of Minnas, I hear that the Lords found a discharge given to intromitting tutors, did liberate all the rest from omissions, even those who were not mentioned in the discharge. Vol. I. Page 46.

ANENT the ARRESTMENT of MINISTERS' STIPENDS.

It was questioned among the Lords, whether ministers' stipends are arrestable. *Ratio dubitandi* is, because they seem only in some manner to be alimentary, and some of them scarce bear the proportion of an aliment. *Præses Everhardus*, in his *Loci Legal. loc. 56, a milite armata militiæ ad militem cælestis militiæ*, is clear to exeme *stipendia clericorum* from legal distress. Vol. I. Page 46.

ANENT REMISSIONS.

By Act 63, Parl. 1503 ; Act 118, Parl. 1540 ; Act 154, Parl. 1592, and sundry other Acts, our Kings are bound up and discharged to grant remissions