

and assoilyied from damages. Some asked, What if they should charge him to implement the bargain yet, *quid juris*? But, this being decided as the process was laid, there was no need of determining who was bound to furnish and seek out the ship.

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1709. *June 15.* WILLIAM LIVINGSTON *against* JAMES LINDSAY.

WILLIAM Livingston dispones a tenement at the back of the Canongate, which he had acquired from the Lord Balmerino, to Sir Patrick Aikenhead, bearing, that he had borrowed from him £1000 Scots; therefore, in security and payment of that sum, and any farther sums he should happen to advance him afterwards, he dispones the said brewhouse heritably and irredeemably; which right Sir Patrick makes over to James Lindsay. Livingston raises a declarator, That it was only a redeemable right of its own nature, though the word *irredeemably* was by mistake inserted therein; for Sir Patrick never advanced more than the first £1000 Scots, which was far from being the adequate price of the house, which was worth more than 4000 merks; and these words explain the meaning of parties,---“That it was only for his security and payment;” which clause were nonsense if it had been designed to be an irredeemable right.

ANSWERED,---That, *esto* the £1000 were below the value, yet he has bestowed more than 2000 merks in reparations and brewing looms, which, with the first sum advanced, does far exceed the true value of the property; and Livingston, who is now irresponsal, designs to inveigle him in a tedious count and reckoning, he never being able to pay him the true sums he has on it, *esto* it were redeemable, as it is not.

The Lords thought the case dubious; yet, by plurality, found that clause of its being granted in security and payment, overruled the rest of the narrative, and made it redeemable; but so as Lindsay should not be obliged to denude till he got payment of his meliorations wared out upon the brewhouse. If it had not related to a special sum advanced, the Lords thought it would have been irredeemable: but they proceeded, *ex conjecturata voluntate et mente contrahentium*, to think no more was designed than a security.

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1709. *June 17.* HUTCHESON *against* WALTER CARMICHAEL.

WALTER Carmichael being the exeunt tenant out of the lands of Arniston, the herd of Hutcheson, the new entrant tenant, suffering his master's goods to encroach upon Walter's corns, the said Walter's servants fell a-quarrelling, and hound them off; whereupon a scuffle arises, and Walter, in defence of his servants, beats Hutcheson's herd, and bleeds him. Hutcheson exhibits a complaint against Walter, before the Justices of Peace, and, upon a probation by witnesses, obtains a decreet, fining him in £100 Scots to the clerk of court, for the riot, blood, and battery, and in 200 merks to Hutcheson, by way of assythment, and to lie in prison eight days, as a corporal punishment; and, after that