

No. 6. 1736, Jan. 15. *CORSAN against M'GOWAN of Meikleknock.*

THE Lords adhered, and I thought his being agent was *per se* sufficient to cut off the eases, not only because such purchases by an ordinary agent against his client are *contra bonos mores*, but also upon the *L. 34, § ult. D. De empt. Vend.* But my difficulty was that he had in effect his client Corsan's consent by the disposition and ratification, and till that was reduced, as in trust, or as fraudulent, the purchase of the debt could not be reduced; but that difficulty was removed by M'Gowan's lawyers owning that that was under back-bond. But we remitted to the Ordinary to hear whether M'Gowan could take the benefit of the eases in support of other debts that fell under the inhibition, 15th January 1736. The Lords (3d February) adhered to the Ordinary's interlocutor finding that the possession must be ascribed to Haircleugh's adjudication.

No. 7. 1736, Nov. 16. *SCOUGAL and YOUNG against GILCHRIST.*

THE Lords found the reason of suspension relevant, that the chargers at the time of the purchase knew the goods were uncustomed or prohibited goods within the meaning of the statute, 11 Geo. I. Cap. ult.

* * * The case Cockburn against Grant 11th and 21st November 1741 here referred to, is mentioned as follows :

This question is anent the sale of prohibited goods, Whether action lies for performance or damages? the very question determined 16th November 1736, Young against Gilchrist; and we found, as we then did, that there lies no action for performance or damages, *venit*. Royston, Arniston, and some others; but for the judgment were President, Justice-Clerk, Drummore, Kilkerran, Balmerino, Monzie, Murkle, Leven, *et ego*;—and 21st November adhered, and refused a bill without answers.

No. 8. 1736, Nov. 30. *BROWN of Carsluith against MUIR of Craig.*

THE Lords adhered to the Ordinary's interlocutor finding the bargain neither usurious nor illegal, but found that the obligation subsisted only during the two granters lives. I think the first part of this interlocutor very doubtful; but I am told there was no vote,—for I was in the Outer-House.—1st July 1736.

The Lords, 30th November, altered the interlocutor between these parties of 1st July last, finding the contract anent the sale neither usurious nor unlawful. They did not indeed think it usurious, but they thought it *mali exempli*, that it should be an express condition of a loan of money that the lender should not only have a right of preemption of lands, (which may perhaps be lawful, if at the market price when the lands come to be sold) but that he should have it at a definite price; and that such contract was reducible upon the same grounds of law as the *pactum legis commissoriae in pignoribus*, or taking a premium for becoming cautioner, viz. that it was *contra bonos mores*. Therefore they found that this contract *quoad* the sale was *contra bonos mores* and not binding.