

crime, which was robbing the public. And if a robber, as an expiation, bestows upon the poor, or upon any person, the money he robs, the detection of his crime, which subjects him to a restitution of the money robbed, will not entitle him to a repetition of the sum he laid out upon pious uses. It was added, That if such a crime were countenanced, it would be an encouragement to concur in robbing the Crown or the public. The defence was repelled; and James Blair was decerned to pay to the pursuer and her husband her proportion of the sum in the trust-bond; notwithstanding of being liable to the public for the sum in the original bond. See SURROGATUM.

No 62.

Sel. Dec. No 19. p. 21.

1790. November 18. THOMAS KINNEIL *against* ALEXANDER MENZIES.

No 63.

A TENANT of Kinneil's having become bankrupt, a sequestration of his effects was awarded by the Sheriff of the county.

*Sale retenta
possessione in-
effectual.*

Upon this, Menzies claimed the property of several articles of household-furniture found in the tenant's possession. He proved, that a sale had taken place, and that his not removing them was owing to the tenant, who was willing that they should remain where they were, as long as it might be convenient.

The Sheriff having sustained the claim, a bill of advocation was preferred, which was followed with answers.

THE LORD ORDINARY affirmed the judgment of the Sheriff, "in respect that every presumption of fraud or collusion between Menzies and the bankrupt had been removed by the evidence."

A reclaiming petition was preferred by Kinneil, which was followed with answers:

THE COURT altered the interlocutor of the Lord Ordinary, on this ground, that the agreement of sale, though *bona fide* made, had not been fulfilled by delivery, the goods sold still remaining in the possession of the seller. Erskine, book 3. tit. 3. § 6. and 7.

THE LORDS found, That the articles of household-furniture claimed by Menzies fell under the sequestration.

Ordinary, *Lord Monboddo.* Act. *Tait.* Alt. *M'Cormick.* Clerk, *Colquhoun.*
C. *Fol. Dic. v. 3. p. 246.* *Fac. Coll. No 149. p. 298.*