

the Lords found, that the purchaser's right could not be affected by this entail ; but, in an action at the instance of Margaret Young, the substitute, they found that James Young was obliged to re-employ the price and take the security in terms of the entail, because he had contravened the prohibition not to sell, and, therefore, was liable for reparation of damage to the substitute, in whose favour the prohibition was conceived. But, if the prohibition had been only to alter the order of succession, the Lords were all of opinion that selling was no contravention of that prohibition, the only effect of which was to hinder an alteration of the destination of succession.

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1761. *November 17.* M'KENZIE of REDCASTLE *against* ———.

A GENTLEMAN in the country gave a commission to a certain person to sell some victual for him, which accordingly he did, and took the bills for the price in his own name. After that a creditor of the gentleman arrested both in the hands of the factor, who had sold the victual, and of the buyer who had granted bills to him. In the forthcoming the factor appeared and pleaded that he must have retention, out of the sums in these bills, of a debt which the gentleman owed him ; but it carried, by a division of eight to six, that he had no retention. It was admitted, that if the money had been paid to him he would have had retention, even against the arrester ; but, as the money was not paid, the majority of the Lords thought there was no subject of retention, because the money was truly due to the constituent, so that if he had sued the debtors in the bills he could have recovered payment from them in competition with the factor ; therefore the factor had nothing in his person that could be the subject of retention, neither the money nor the *nomen* ; and, besides, Lord Alemore observed, that he had no warrant from his constituent to take the bills in his own name : perhaps, indeed, he had a power to do so, but, by doing so, he could not have a power to create a security to himself, which it does not appear his constituent had any intention to give him.

24th *February* 1762,—This decision altered unanimously.

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1761. *November 20.* LORD NAPIER *against* CAPTAIN LIVINGSTON.

There were here two questions of considerable moment to our feudal system, which were debated among the Lords *in abstracto*, and shall be stated here in the same manner. A lady had a personal right to lands by precept and procuratory unexecuted : these lands held of a subject superior, and she made a strict entail of them, by granting procuratory for resigning them “ in favour of herself and husband, and longest liver of them two in liferent and conjunct fee, for her husband's liferent use allenary, and to A and his heirs male.” She died, and A, without making up any titles to her, infest himself upon the precept in the disposition to