

no decision, but gives his own opinion. And the Roman law is clear, *l. 66 D. Locat. quod nemo prohibetur rem quam conduxit fruendam alii locare, si nihil aliud convenit*. And though *habitatio* be a personal servitude, and of a far stricter nature than *locatio conductio*, (which is our tacks and assedations,) *et bonæ fidei contractus*, though *stricti juris* as to transmission, yet *habitationem habentibus permittitur, non tantum in ædibus degere, sed etiam alii locare; l. 13 D. de Usu et Habitat. § 5, Institut. eod. tit.* And Sir George Lockhart was of opinion that a tenant might subset. See Stair, *2d January 1672, Lady Binny*.

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1687. WALTER SCOT of LETHAM *against* The EARL of MARISHAL.

*February 16.*—THE Lords advised a concluded cause at the instance of Walter Scot of Letham, against the Earl of Marshal, who suspended his bond of £9000, on this reason, that Sir John Scot had contravened the warrandice of his disposition, (for which the £9000 bond was given,) by making a prior right of the Stane of Benholm to Hercules Scot. ANSWERED,—He is only a consentor, which is but a *non repugnantia*, and he got no money from Hercules,—but the Earl got a renunciation of a wadset they had upon Urras; and if the Earl reclaim, they are content to repone, and be reponed.

The Lords found this a contravention, but that the offer to repone purged this contravention of the warrandice; and therefore found the letters orderly proceeded against the Earl. *Vide 9th June 1687. Vol. I. Page 448.*

*June 9.*—Walter Scot of Letham's charge against the Earl of Marishal, mentioned 16th February 1687, is debated of new; and the Lords adhered to their former interlocutor; but ordained the Earl only to denude with the burden of the rights, dispositions, and ratifications he had granted, as obliged thereto by his transaction with Sir John Scot; for the Earl of Marishal alleged it was impossible for him to repone him, because *res non erat integra*, he being taken obliged to ratify rights which otherwise he might have quarrelled.

The Lords salved this in manner foresaid.

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1687. *June 10.* GEORGE MASTERTON *against* WILLIAM MASTERTON.

GEORGE Masterton, writer in Edinburgh, pursues William Masterton on the passive titles, for payment of a debt; who ALLEGED it was paid: and he having produced some receipts of the date of the bond of corroboration, the Lords refused to allow thir receipts, unless they had been posterior; especially seeing they had not appeared to give their oath of calumny, if they had reason to propose payment.

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