

he restoring the price, which is called a Reversion or Power of Redemption. And when he does so, he enters again into his Right by Virtue of that condition, and the Purchaser ought to restore him the Fruits from the Day he made his Demand l. 2. C. de pact. inter empt. & vend. A Reversion of Movable is no real Quality affecting the Thing bought, or a singular Succession therein, but produceth only personal Action against the Buyer d. l. 2. arg. l. 25. f. de sig. et ait. l. si fin. f. de contrah. empt. For such Reversion is not as the Reversion of Lands, made real by Statute, and continued only a personal Obligation or Right, as all Reversions are sua natura. Yet a Reversion belonging to the Author of Movable is impignorat, being a Part of the Contract, is of Force against singular Successors Stat. Lib. 5. Tit. 4.

It is agreed, that the Seller and his Heirs shall have the Privilege to buy back again what is sold before any other offering the same Price. This is called jus retractus or jus retractus from τραπεζοε and τιμας honoris, for it is an honourable Preference. This Right of Preemption is either appointed by express Agreement of Parties l. 75. f. de contrah. empt. l. 12. f. de prescript. verb. or competent by Prescription of Law or Custom, as it is allowed to a Superior of Lands adjudged or appraised, that he may take the Land to himself upon paying the Debt due to the Appraiser or Appraiser, and sum equivalent to the Value of the Lands, where it is left than the Stat. l. 3. Tit. 5. f. 3. to fine idem. See also of Thirlestane contra L. Drumlanrigg. A July 1713 University of Glasgow contra Hamilton of Dalziel.

Retractus gentilitatis is a Right analogous to the former, whereby the Seller's next Kineman is preferred to the Buying of what was alienated out of the Family. Which Privilege, tho' discharged by the Civil Law l. 19. C. de contrah. empt. is allowed by the Mosarical (Levit. 25. 25. Ruth. Canon c. 8. X. de integ. restit.) and Feudal (Feud. Lib. 5. Tit. 13.) Law. The Statute by a general Custom in most Places of Germany, France, Italy, Spain &c. And Guil. 2. Obscrv. 19. p. Juraguel de retract. in Major. n. 5. Carpzov. jurispr. forens. Part 2. Concl. 35. Def. 2. And tho' it be of little Use among us, is fully explained by Craig Feud. Lib. 3. Tit. 4. But this custom is not followed in England, D. John dylffe perfect of the Roman Civil Law vol. 1. Book 4. Tit. 3. pag. 445.

Sect. 2.

Of Letting out and Hiring.

Letting out and Hiring, is a Contract whereby one Party gives to the other the Enjoyment or Use of a Thing, or of his Labour, during a limited Time, for a certain Rent or Hire, which may be either in Money or in any other Fungible. The Commerce used among Men for communicating to one another the Use of Things, or of their Industry and Labour for a certain Time

or Reward, is of ~~great~~ most necessary and frequent Use. For since it is not ~~possible~~ possible that all Men could have in their own Property all the Things which they stand in Need of, nor that every one should do that business which cannot be done without Industry and Labour, and that it would not be just that the Use of the Things of others or of their Industry and Labour should be always gratuitous: It has therefore been necessary for us to make a Traffick of all these Things. Thus he who has a House which he does not inhabit himself gives the Use of it to another for a certain Rent; Lands are let out to Tenants, or Labourers are hired to till them. People hire Horfes, Sackes, Hangings and other Movable, and others make a Traffick of their Industry and Labour either by the great Retail Trade of a much longer Day, or by other Bargains and small Jobs. Contracts are in the Roman Law comprehens'd under the Names of Letting out and Hiring, in the Law of England are term'd Leases of Land, Leases of Houses, the Lease of a Farm, or Lease of Work, to be done. The Letting out of a House or Lands or other Immovables is in Scotland call'd a Leas of which I have treated in another Place, supra Part 2. Tit. 2. Chap. 2. Tit. 2. Sect. 5. In the Letting out and Hiring the one Party gives a Thing or Conveys another, and the other Labour for a certain ~~Time~~ <sup>Period</sup>; the Letting out of Things he who gives the Thing lets it out, and is call'd an Engager, and the other who takes the Thing is call'd the Lessee. In the Letting of Labour he who gives a Work to be done lets it out, the Person who undertakes the Work and bestows his Labour and industry is call'd the Undertaker l. 22. s. l. f. locat. l. 2. C. de locat. Tit. 1. n. 1. In the Letting of Labour the Workman lets out and gives his Labour and Industry for Hire l. 22. s. l. f. locat.

Letting out and Hiring of Things, in the Letting out of Labour and Hiring have some Characters and Rules of Law common to both, and must not also some essential Differences and particular Rules, I shall first compare what is common to both, and then explain what is peculiar in Leases of Labour and Work.

J. Rules of Law common to all Kinds of Letting out and Hiring, whether of Things or of Labour and Work.

The Contract of Hiring and Letting is accomplish'd by the Consent of both Parties, when they are agreed as to the Thing to be enjoy'd or the Work that is to be done, and as to the Rent or Hire l. 5. f. locat. Which Contract of Hiring and Letting of Movable, is bonae fidei, whereas Leases are stricti juris.

We may let to Hire all Things which the Hirer can restore back to the Letter after he has enjoy'd them, from whence it follows, that Things which are consum'd by the Use of them as Corns Wine Oyl and other Provisions, cannot be let to Hire. A Thing belonging to another Person may be let as well as sold, by him who possess'd it honestly believing himself to