

Off they do exceed it, it would not be just that the Creditor should be obliged to Refund them. 29 § 2. ff de Pign. & Hypo. But Whether the building be worth more than what it cost, or worth as much or less, it will be free for the Builder, to retain the Gross and building if he pays the debt. And the other Changes that may be made by any possessor of a ground that is subject to a Wadset, as if a house were turned into a garden, a field into a vineyard, a wood into Meadows ground, these Changes do not Extinguish the Wadset, but it subsists upon the new face that is given to the ground. 16 § 2 ff de Pign. & Hypo. A Wadset having a Disposition of the property under Reversion, cannot sell the Wadset lands and pay himself; but can only, as any other Creditor, affect the Reversion. Legal Diligence of adjudication, and Claims preference in Common Law according to the priority thereof. Stair Lib. 1 Tit. 13 § 13.

A Wadset is either proper, or Improper.

A proper Wadset, is where the Wadset takes his hazard of the Rents of the lands or others Wadset, in satisfaction of the Annual rent of the sum for which the Wadset is given, and pays all publick burdens: as he so is a temporary proprietor of the lands &c. Cum pacto de retro vendendo. This sort of Wadset is the same with that which in the Roman Law is called Anticr. 11 § 1 ff de Pign. & Hypo. Eujac. lib. 3 observ. 3 § Aliat 2. Disjunct. Cap. 3. from ARTI. DONA DE X. P. 15. 18. And in the Law of England is termed Mortuum Vendium, a Mortgage in a proper sense, or a Deu gage from the french Mort Death & gage a pawn or pledge. Because ejus fructus vel Reventus Tuticim percipit. Nullo se acquiescant, what ever it yieldeth to Redeemeth not self by such profit, Etce ex the whole sum borrowed be paid. A proper Wadset is not accountable for his Intromissions with the Rents till the Wadset be Redeemed, tho' far exceeding his Annual rents. It being just that the Wadset who ran the risk of having <sup>lost</sup> the Interest of his Money, should have the Chance of getting more, if good fortune or Industry did heighten the Value of the Rents. So that such a former Prospect of advantage was never held to be Usury. 17 June 1643. Heekford contra Hea observed to Dirlotown Stair Lib. 2, Tit. 13 § 1. Because like Emptio factus Actus, or <sup>penus</sup> <sup>nautic</sup>

Nauticum, it is but a hazard of Gain which may be Disappointed by the falling of the Rents: and usury is a certain Gain whose a Wadset was Granted in these terms, that the Wadset should pay of the Rents, and the Grantor of the Wadset free him of Levies of horse, feu duties and Ministers Stipends: It was found, that the Wadset was not accountable for the superplus rents exceeding his Annual rent; In respect it was a proper Wadset, the Wadset not being free of all hazard of the Rents, tenants, wars, and Vacillation 24 January 1677 Home of Ford contract heard observe by Dirlotown. But Sir George Mackenzie (Crim. part 1 Tit. 24 § 4) is of opinion, that the hazard if it be not so great as may Compensate the Excess of Annual rent taken beyond the Legal Interest, excuses not from Usury: as that when the Rents of a Mill or Salmon fishing, where of a proper Wadset is granted, do ordinarily far exceed the Wadset's Annual rent, he is guilty of Usury. When any part of the sum in a proper Wadset is paid, it should be so paid as to Restrict the Wadset, or make the Wadset accountable in proportion thereto: For otherwise the Wadset will stand good simply, and the buyer has only personal action to receive or get allowed. Mackenzie answers to Dirlot. Doubts Tit. Wadset proper. Proper Wadsetters in possession, are Intitled to vote in the Election of Members of Parliament, in case a secret of Declaration or Voluntary Redemption Resignation or Renunciation in a write under the Wadsetters hands be produced Act 21 Par. 3 Ch. 2. Because during Cromwells Usurpation and the National troubles many persons had Wadset their lands in the proper form to their great loss, a Law was made obliging all Wadsetters, whose Rights were granted in that Interval, either to quit their possession, or Restrict themselves to their Annual rents and Impute the overplus In sortem; upon the Debtors offering Security for their Annual rents Act 62 Par. 1 Sept. 1706. A singular Successor as an adjudger of the Reversion, is Intitled to make this offer of Security to such a Wadset Letter, and to Prave that <sup>he</sup> <sup>is</sup> <sup>in</sup> <sup>possession</sup> 10 Feb. 1710. Levin contra Morison of Beynie. But an adjudication in