

speaking and the *consuetudo regionis* explain this. If any man, on the road, call for corn to his horse, what stabler will bring him wheat? If I bargain for a chaldron of corn, would I not be laughed at if I demanded wheat? Now, the custom of the country must overrule this; why seek you wheat where there is none? And though I, and others in my circumstances, have for sundry years paid wheat, at least the value of it, shall that error wreath a perpetual servitude on my land: For law says, *error communis dat nullum jus pro futuro*. And though *frumentum* may signify wheat in those places where it grows, yet that cannot be stretched to my country, where it uses not to be sown.

The Lords thought the use of payment would go far here to explain the meaning of parties; and, therefore, allowed a conjunct probation, before answer, as to the manner that this feu duty has been paid. *Vol. II. Page 437.*

1708. *February 27.* MURRAY against MURRAY and DUNDAS.

MURRAY's wife being infest in a tenement in the Canongate, thus, *in dimidietate trium partium*, she disposes this to her husband; but when the clerk comes to extend the seasine, he infests him not *in dimidietate trium partium*, (as the wife's, the disposer's seasine ran,) but *in dimidietate tertiæ partis tenementi*. The daughter, and only heir of the marriage, serves herself heir to her mother, and infests herself, as her mother was infest, *in dimidietate trium partium*: and having withdrawn from her father, and disposed to one Ann Dundas, and competition arising for the rents, it was contended, The father, by his infestment, had but right to a half of a third part, which makes a sixth part of the whole, and they had the half of three parts; which being the half of the whole, they behoved to be preferred to the maills and duties, paying him the sixth part.

ANSWERED,---This was but a pure and absolute mistake in the notary, turning the *numerus ordinalis* into the cardinal, ignorantly thinking them all one; and the mother never designed any such restriction. Yet the Lords found they could not mend it, and, therefore, found he had right to the said part, and Dundas to the rest.

Then he ALLEGED,---That the principal disposition bore a marginal note, disposing the half of three third parts to him; which must regulate all: but the extractor had neglected to take in this margin into the extract now lying in process; and, therefore, craved a warrant to produce the principal.

The Lords ordained the clerks to transmit the principal, to see if that marginal note was signed, and how it runs, and why it was omitted in the extract. By thir last two decisions, we may see what care ought to be taken in wording clauses, and that clerks and notaries should be exact in the Latin tongue, as the 45th Act 1587 requires; which few of them are, as, by experience in their examinations, I oft found; and therefore remitted some of them. And it were to be wished, for the general good of the lieges, (who oft lose their causes through their ignorance,) that the Lords were most strict in admitting them. It is an old observe of the eminent Azo, *per nequitiam et imperitiam notariorum peribit mundus*. *Vol. II. Page 438.*