

No 18. Alexander Deuchar, and not in favours of the creditors to whom they stood engaged as co-principals or cautioners; Mr William Carmichael, as donatar to the escheat of Mr George Lesly, Sir Robert Forbes, and Alexander Deuchar, has right to Glass's obligation in the said back-bond, and not Wilson of Sands, who came in place of Mr Lothian, one of the creditors, proportionably to his interest.

Fol. Dic. v. 1. p. 512. Forbes, MS. p. 25.

No 19. 1729. February. GOLDIE of Haughyet against Mr ANDREW AITKEN, &c.

A PERSON disposed his estate in trust, and took the trustee's back-bond, obliging him to sell the same, and apply the price for satisfying the disponent's creditors, and the remainder to be applied to the disponent's wife and children. The lands having been sold in execution of this trust, a part of the price remaining in the trustee's hand, was confirmed by an executor-creditor of the disponent, as *in bonis defuncti*. It was found, that this confirmation could afford no ground of preference in competition with the other creditors, seeing there was somewhat further intended in this transaction than a bare commission to the disponent for the behoof of the disponent; the back-bond bore that the disposition was granted in order that the price might be applied to the creditors, which argued that the disponent had a view to his creditors, and was stipulating for their security. See APPENDIX.

Fol. Dic. v. 1. p. 512.

SECT. IV.

Among third parties having an Interest, who is preferable?

No 20.

When an obligation given to clear incumbrances specifies some of them particularly by name, and then subjoins a general clause of all other incumbrances, those particularly named are preferable.

1635. February 5. KER against KNOWS.

IN this cause, which is mentioned January 29. 1635, No 36. p. 699, *voce* ARRESTMENT, it was *alleged* by KNOWS, that he could not pay to the pursuer the sums acclaimed, as being arrested in his hands, and as addebted to him by Craw; because, by the bond produced, whereby he is constituted debtor to the said Craw, it is provided, that the said Craw, his creditor, should pay, and employ the same for relief of two sums addebted by the said Craw to two of his creditors, who had served inhibition against the said Craw, their debtor, before the alienation of the land made by the said Craw to this defender (and

for the which alienation, the sum acclaimed, is a part of the price) and for purging of all other inhibitions executed against him, according whereto the defender has given bond to the said two creditors, specially expressed, for payment of their sums; and which bonds, albeit given after the arrestment made by the pursuer, must liberate the defender at this arrester's hands, in respect the writ, whereby the pursuer constitutes him debtor, is affected with this condition, and which he may yet lawfully do, in respect of the provision fore-said, specially expressed therein; and albeit the pursuer *replied*, that the provision of the bond is not tied only to these two special creditors, but also has joined there with others in that same clause, in a connected phrase, viz. "and for satisfying of all other inhibitions;" seeing therefore he had arrested, before he gave bond to these two special creditors, and that he had not only arrested, but also had served inhibitions long before any inhibition executed by any of these two creditors; therefore, in respect of his diligence, and that the others had done none, the defender voluntary binding himself to the two creditors, ought not to postpone the pursuer, but he ought to be preferred in the sum acclaimed. The Lords, notwithstanding of the pursuer's first inhibition, before the other two creditors to Craw, and notwithstanding of his arrestment before Knows gave bond to these two special creditors, found the exception relevant, and that the payment appointed by the bond, and to be made to the other two creditors specially mentioned therein, ought to take effect before payment could be craved by this arrester; albeit the bond *unico contextu* provided payment to be made to them two, and also to all other creditors who had served inhibition; which generality, the LORDS found, could not take effect, but after the two creditors *specifice* named were first paid, seeing the defender was content to run the hazard of this pursuer's first inhibition; and so the special persons named were preferred, albeit there was no note of priority, appointing them to be paid, in the first place, by that bond, but only *in ordine scripturæ* their names were expressed first therein; and therewith, the said general clause immediately thereafter, without any directing of preference, or posteriority, and albeit there was no diligence done by any other but this pursuer.

Act. Craig.

Alt. Belsbes & Mowat.

Clerk, Gibson.

Fol. Dic. v. I. p. 513. Durie, p. 750.

1672. July 18.

WATSON against BRUCE.

No 21.

AN assignation was granted, bearing to be for relief of the assignee's cautionry, and also for relief of another cautioner; this clause was found to import a proportional relief to both, according to both their engagements.

*Fol. Dic. v. I. p. 509.** * * This case is No 70. p. 3537., *voce* DILIGENCE.