

No 21.

bonds the said Patrick Gordon having made Keith and L. Glenkindie assignees, and they charging thereupon the said Alexander Irvin to pay, he suspends upon compensation of the victual owing by the said Patrick Keith to him, conform to the said contract, which was the ground of the bonds whereupon he was now charged, and which compensation, he alleged, ought to be received against these assignees, as it might be received against Keith his debtor, or against Gordon their cedent, who acquired the right of the bonds, albeit in his own name, yet to the behoof of Keith, as was appointed by the contract; and albeit the bonds be pure and simple, and neither make mention that they are given to the behoof of Keith, nor yet depend upon the contract; whereby it was alleged, that this reason of compensation cannot be received against these chargers, who are true creditors to Gordon, and who seeing the bonds in their debtor's name, and to be simple, not affected with any quality or condition, were in *bona fide* to take assignation thereto, and ought not to be prejudged by any other bargain betwixt this suspender and the cedent; likeas they alleged, that the compensation cannot be received against them who are assignees for a true just debt owing to them; and so much the rather, because the debt owing to the suspender by Keith, is only liquidate since they were made assignees, and since their charges executed thereon, and since the time that they obtained protestation against a prior suspension raised in this same matter; notwithstanding of which allegiance, the LORDS found the reason of compensation relevant, as well against the assignee as against the cedent, and found it would have militated against the cedent, as if Keith's name had been insert in their bonds, in respect, albeit, the bonds were simply made to Gordon, yet the same behoved to be reputed conform to the contract, to be made to the use of Keith, who was the suspender's debtor; seeing it could not be qualified that there was another cause, whereupon the said bonds were given to Gordon the cedent; and albeit, the debt was liquidated since the charge, yet the compensation was relevant, seeing the debt was existant before the assignation, and was contained in the same contract, which was the ground whereupon the said two bonds depended, as said is.

Act. Nicolson & Davidson.

Alt. Gilmour.

Clerk, Gibson.

Fol. Dic. v. 2. p. 63. Durie, p. 787.

1636. July 21.

KING against DOUGLAS.

No 22.

A liferenter disponed his right to the fiar, taking a back-bond to relieve her of the debt of a former fiar. This found

ONE Janet Douglas relict of James King, being liferenter of a certain sum whereof her son had the right of fee, which Janet dispones to her said son the liferent thereof, and at the very time of the disposition, the same day before the same writer and witnesses, receives a bond from her son, by the which he obliges him to relieve his mother of her Husband's, his father's whole debts, and if he did not, that he should repone her to her own place against

that disposition, and in that case declares her disposition to be void; after which the said son makes Janet King his sister, assignee to a part of the said sum, who pursuing the debtor therefore, the said mother compeared, and alleged that she ought to have her liferent, the sum being provided to her during her lifetime; and the daughter opposing the foresaid disposition of her liferent to her son, and the mother duplying upon the said bond granted by her son, done at the same time, as said is, which being *pactum incontinenti adjectum* must be of force, as if it had been insert in the body of the disposition; likewise she had action of declarator intended upon the back-bond, and her said son knowing that he has failed in the condition of the back-bond, has reponed her; and the daughter answering, that the bond could not work against her, who was a singular successor, and saw a disposition pure and simple, not affected with any such condition, as the back-bond bears; and for the declarator, it is posterior to the right made by her brother to her, and sicklike the disposition is posterior: THE LORDS found the pursuer's summons, and the answers in fortification thereof, relevant, and repelled the allegiance proponed upon the back-bond, which, albeit done at the same time of the disposition, they found could not prejudice this pursuer, who is a singular successor, but only should work against the granter's self; and the action and reposition being after the right made to the pursuer, and intimation thereof were rejected, seeing the condition express in the back-bond was not insert in the disposition *in corpore primi juris*.

No 22.
not to affect
a singular suc-
cessor.

Act. ———.

Alt. Heriot.

Fol. Dic. v. 2. p. 63. Durie, p. 820.

1663. January 14. JOHN SCOT against MONTGOMERY.

JOHN SCOT, as assignee to certain bonds granted by Montgomery to Andrew Robertson, charges Montgomery, who suspends upon this reason, that he instantly instructs by a back-bond, that the bonds are for the price of certain lands, and by the back-bond it is provided, that these sums should not be paid till the writs of the lands were delivered, and payment made of some duties thereof.

THE LORDS found the back-bond, being before the assignation, relevant against the assignee, albeit the bonds were simple, bearing borrowed money.

Fol. Dic. v. 2. p. 64. Stair, v. 1. b. 156.