

should be made before the intending of any summons upon the act of debtor and creditor for count and reckoning : and that they would decide so in all time coming : But found, That the pursuer's renouncing the benefit of the act of debtor and creditor did not bind him, in regard the Act of Parliament is posterior thereto.

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1666. February 24. CHARLES MAITLAND of HATTON against SIR WALTER SEATTOUN.

CHARLES Maitland of Hatton, being donatar to the forefaultry of William Dundas, pursues Sir Walter Seattoun for exhibition and delivery of all sums, writs, and bonds, conceived in favours of the forefaulted person.

The defender having deponed, he acknowledged that he had the tacks of the coal and salt of Bonhard, wherein the forefaulted person was portioner ; as also the count books relating to the partnery of coals and salt ; as also acknowledged two bonds, granted by Sir William Dicks to blank, containing the sum of 8000 merks, and assigned in favours of the said William ; as also, that the writs of Magdallens were sent by William his wife to the deponer's house, but that the same was after the arrestment. Sir Walter, after he had deponed, being urged to exhibit the writs which he had acknowledged, produced only one seven years' tack of the coal of Bonhard, set by certain of Bonhard's creditors-comprisers to Sir Walter, Sir William Dundas and — : Therein there is no mention of the salt. As also produces Sir William Dick's two bonds, with the assignation.

It was URGED by Hattoun, That he ought to be decerned to deliver the writs of Magdallens, seeing he acknowledges the same was in his own house and custody.

And it being ANSWERED, That the writs were in his custody the time of the arrestment, but thereafter sent by William Dundas his wife to the deponent's wife, and delivered back, and are now in the deponent's custody ;—

It was REPLIED, That, after the forefaulture, the Committee of Estates having given a factory for uplifting the forefaulted person's rent, —, and all goods and writs belonging to him, for the use of his majesty and his donatar ; and, by virtue thereof, arrestment being made in Sir Walter's hands ; the said arrestment did affect, and must make Sir Walter liable, not only for any goods and writs that were in his hands the time of the arrestment, but likewise for those that became in his hands and power after the said arrestment, *quocunque tempore* : and he was *in pessima fide* not to have retained the same ; seeing, by his oath, he acknowledges they were the writs of Magdallens, and saw the same, and in duty and allegiance ought to have detained the same for his majesty's use and his donatars.

The Lords decerned in the exhibition of the writs, in regard of the warrant, and intimation thereof to Sir Walter Seattoun ; which the Lords found was sufficient to put him *in mala fide* : and repelled the quality, as being altogether extrinsic to the oath ; unless he would turn the same in a defence, and prove accordingly.

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