

to put him *in mala fide* to pay any creditor, it was against reason to take from him the estate without any allowance of those sums whereof he could get no relief: But, notwithstanding, the Lords reduced his right, as being upon trust, which he had declared by his back-bond; and, finding it to be a contrivance, would have no respect to any voluntary payment he had made.

This decision, though it was hard, as being the first of this nature, yet was done upon a just consideration to obviate fraud and contrivances to prejudge lawful creditors.

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1669. July 28. CAMPBELL of ORMSAY *against* CAMPBELL of GLENCARADEL.

SIR Archibald Campbell of Glencaradel, *in anno* 1614, having disposed his lands and estate in favours of his grand-child; with an express condition, that, so soon as he should attain to the possession of the lands, he should assign to his brethren a bond of 4000 merks due by the Earl of Argile; his said brethren did pursue for delivery of the bond, and an assignation thereto. The defenders did make offer of an assignation; but ALLEGED, That they were not obliged to produce the bond, which was never their evident, but retained by the goodsire, who had power to dispose thereof during lifetime.

The Lords, notwithstanding, found, That they were obliged to produce the bond; unless the defenders would offer to prove that there was such a provision, and that, conform thereto, the goodsire had uplifted and discharged the sums therein; seeing the said 4000 merks were granted as a provision from the goodsire; and the estate being disposed to the eldest brother, with a condition to assign that bond, behoved to be interpreted *cum effectu*; and, without delivery of the bond, the assignation could signify nothing.

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1669. November 20. MARY STIRLING, and POLTOUN, her Spouse, *against* BAILIE JUSTICE.

IN an exhibition, pursued at the instance of the said Mary, and her husband for his interest, against Bailie Justice, of a principal bond which he had in his custody, as tutor to the said Mary's son; the said Bailie did produce an extract out of the register: It being ALLEGED, That the principal ought to be produced and taken out of the register; because it was put there after the death of the principal debtor, whose estate was to be comprised for this debt; and so could not work against him, but only against the cautioner, who was then alive; especially seeing the defender had registered the same after intenting of the exhibition, and so did it *dolo malo*.