No. 11. to his own behoof; but if he were extending the gift to other lands of the rebel's, that might be presumed to the rebel's behoof, because the donatar had no anterior interest of his own to these lands. It was answered, That if the rebel had given the money to purchase the right before it was purchased, it would infer unquestionable simulation; and it is wholly equivalent, that having then the rebel's money in his hand, the rebel *ex post facto*, allowed the expenses of the gift; 2*dly*, Albeit such an allowance *ex post facto*, would not be sufficient, where the donatar acquired the right to the lands *bona fide*, and then *ex necessitate* behoved to purchase the gift to maintain his right; but here the donatar was *in pessima fide*, and most unfavourable, because if need be, it is offered to be proved by his oath or writ, that he knew of George Hamilton's right, and that the same was complete before he bought from the common author, and so is *particeps fraudis* with his author, in granting double rights contrary to law; and therefore the presumption of simulation and fraud, ought to proceed against him upon the more light evidence.

The Lords found the ground of simulation not relevant, upon taking allowance from the rebel of the price, if it was done for the maintaining of a right *bona fide* acquired; but found that it was sufficient to infer simulation, if the right was *mala fide* acquired; and that the donatar, at, or before he bought the land, knew of the other party's right.

Stair, *v.* 1. *p.* 621.

1672. *January* 24. BOYLSTON *against* ROBERTSON and FLEMING.

No. 12.

A person receiving money to buy goods for another, having bought and received them in his own name, without mention of the truster, the property was found to be in him, and his creditors arresting were preferred.

Stair.

*** This case is No. 6. p. 15125. *voce* SURROGATUM.

*** This decision has been considered to be erroneous.—See p. 13439.

1673. *February* 21.

JAMES RAE *against* ALEXANDER GLASS of Sauchie.

No. 13.
A person trustee on one subject who buys in a right, which might, in other hands, compete with the right in which he is trustee, must

In the count and reckoning betwixt the said parties, there being an article of discharge given in, craving deduction of £.8000, in so far as Sauchie before ever he recovered payment of any part of the sums assigned to him by James Rae, he did advance out of his own means 4300 merks, whereby he purchased a right to a prior comprising led against the Earl of Loudon's estate, which did extend to the payment of the said £.8000, and therefore he ought to have the benefit thereof, and that interest could not be charged upon him as accountable therefore; but the said right ought to be looked upon as Sauchie's own purchase with

his own means;—it was answered, That the Earl of Loudon not being anywise debtor to Sauchie *proprio nomine*, but only assignee constituted by the pursuer, which was only in trust, any right he acquired to a prior comprising of the said estate, can only be looked upon as done in contemplation of that trust, and ought to be accountable for the whole value thereof, with deduction only of such sums as he truly paid, seeing the assignation was for greater sums due by the Earl of Loudon, and the Earl of Marshall, than that whole right acquired amounts to. The Lords did find, that Sauchie ought only to have deductions of such sums as he did truly depurse with the interest thereof *et cum omni causa*, but ought to be accountable for the superplus, in so far as that right did extend to; in regard that any sums he had advanced, albeit they were his own proper means, yet it was as a person entrusted by the foresaid assignation; but they reserved how far the assignation was onerous, until the whole count and reckoning should be determined.

No. 13. communicate the advantage of his purchase, for behoof of the trust-estate.

Gosford MS. p. 323.

1673. *November* 27. BEATTIE *against* The LAIRD of MORPHIE.

No. 14. Import of an assignation in trust.

The Laird of Dun having disponed certain lands to the Laird of Morphie, he gave a back-bond, obliging himself to pay certain particular sums of Dun's debt, with a general clause to pay all sums due by him to the Earl of Ethie for himself, or whereunto Ethie was assignee; and by a posterior bond of corroboration, the foresaid back-bond, and that clause is repeated, and then it bears, "that a sum of £.2,000 due to Robert Beattie, whereunto Ethie was assigned, was not yet satisfied, therefore Morphie obliges himself in corroboration of the first bond, and but derogation thereto, that being satisfied of the sums due to himself by Dun, he should pay Beattie's sums out of the superplus of the price of the lands: After both bonds Ethie grants a retrocession to Beattie, bearing, "that his name in the assignation was only in trust, to Beattie's behoof, and assigning Beattie to the back-bond, and bond of corroboration. Beattie's executors pursue Morphie upon the general clause in his first back-bond, to pay this debt whereunto Ethie was then assignee. It was answered for Morphie, that the clause being only in favours of Ethie, who stood then assignee to this sum, Ethie might have discharged the clause, or qualified it as he pleased: *Ita est*, he qualified the back-bond by the bond of corroboration, that Beatie's sum should only be paid out of the superplus of the price, which therefore must be accounted as only due, in so far as there is a superplus. It was replied, That by the first back-bond, there was *jus acquisitum* to Ethie, not only for himself, but as being in trust for Beattie, which therefore Ethie could not qualify or lessen by the bond of corroboration; neither is the said corroboration a deed of Ethie's, but of Morphie's, whereupon Beattie doth not found; *2do*, The bond of corroboration bears expressly, but derogation to the first back-bond, and so nothing therein can derogate