

No. 18. knowledged then that that was the last bond due by Lothian to Balmerino ; and seeing there was no mention or notice of this bond for the space of seventeen years, it must have been upon some design that took not effect, which Lothian after so long a time did not remember, nor doth Balmerino know the true cause, but pretends his Lady's relation to be the cause which may be improved. There were also many allegiances on either hand, as to the delay of making use of the bond.

The Lords found, that albeit this bond was lying blank by Sir Thomas Nicolson, at the time of his death, that the grounds adduced were sufficient to clear, that he had no interest therein : and as to the defences, for Lothian, which resolved into two, the incompleteness, and undelivery, and the being put in Sir Thomas Nicolson's hand for some design that took not effect, the Lords before answer thereto, ordained Cockpen and the other witnesses subscribing the bond, to be examined *ex officio*, where the bond was subscribed, how it came to be delivered to Sir Thomas Nicolson, if it was sent to him by the Earl, and what he expressed when he sent it ; and also the Lord Jedburgh to be examined, whether *in anno* 1653, there were bonds given up by Balmerino to Lothian, and what was the cause of giving up thereof ; and also Cesnock to be examined, if he was a communer betwixt the parties, and if there was any transaction anent an 10000 merk bond, and if there was any mention of this bond, or if the 10000 merk bond was treated as the remainder of the sums due by Lothian to Balmerino.

Stair, v. 2. p. 679.

1679. February 11. FORBES *against* The LAIRD of BOYN.

No. 19.
What adm-
niculations
sufficient to
instruct that
a gift of
escheat was
in trust ?

The Laird of Blackhall standing in the right of the estate of Balvenie, did, with advice of the Lord Salton, grant a disposition thereof to young Philorth, now master of Salton, who granted a back-bond, That the estate should be redeemable upon payment of £.38.000, whereof a part was employed for purchasing to Philorth an apprising at Kinminnitie's instance. In Philorth's back-bond, he is obliged to compone with the vassals of Balveny, whose feus were questionable by Blackhall's right, and to lift the compositions already made by a commission from Blackhall to the Lord Salton himself and others, and to grant confirmations to the vassals, and to apply the compositions for satisfying of the said sum of £.38,000. Arthur Forbes having a right to this back-bond, pursued a declarator against Philorth, that the sum was satisfied by the compositions of the vassals, and his intrusions with the rents ; in which process Sir Charles Erskine, Lord Lyon, having obtained the gift of the escheat of the late Lord Salton, competing did allege, that he had right to the bonds granted by the vassals, as being to the behoof of the Lord Salton, when he was at the horn, and therefore Philorth could not apply them for payment of his wadset, but behoved to make them forthcoming to the donatar. It was answered, That the gift of the escheat, though it was in the Lord Lyon's name, was to Philorth's behoof, and therefore he could not con-

trary to his back-bond and trust, apply the composition to his gift, and not to his wadset, which the Lords found relevant, and for instructing the trust of the gift, the Lord Lyon was appointed to depone, who deponed, (the other party not being present to give interrogatories) that he might dispose of the gift at his pleasure; but thereafter he was ordained to be re-examined, whether Philorth's good-brother had told him that he would take a gift in his name of Salton's escheat, and that the declarator raised upon it, was managed by Philorth, by his charges and expenses; and though the Lord Lyon lived several years thereafter, yet he never deponed upon these interrogatories, but after his death, his testament being confirmed by his children, without owning the sums due by these vassals, or confirming them as belonging to their father, the Laird of Boyn had confirmed the same as executor *ad omnia* to the Lord Lyon, having no interest in him, but a confident of Philorth's.

The Lords found these adminiculations sufficient to instruct, that the gift of the escheat was in trust in the Lord Lyon's name, to Philorth's behoof.

Stair, v. 2. p. 690.

1679. December 20. FOTHRINGHAME *against* MAULD.

Fothringhame of Pourie having obtained a decret of pointing of the ground of lands belonging to Mauld of Ballumby, he raised reduction on this reason, that Pourie having bought the lands of Muirhouse, and being obliged to procure himself infest by the superior upon his own charges, he had taken a right from the Earl of Crawford, superior, to many years by-gone of the non-entry of these lands, in the name of Bandoch, his cousin-german as his confident, in trust to his behoof. This being a matter of trust, the Lords *ex officio* ordained Bandoch to depone, who accordingly deponed upon several interrogatories, given in for Ballumby, and his oath did bear, "That the gift was to his own behoof, and nowise to the behoof of Pourie," which were the first words of the oath, and did also bear, "Answers to his special interrogatories;" which oath coming to be advised, it was alleged, that thereby the trust was proved, it bearing, "That Pourie was advised, that a gift in his own name of the non-entry, would afford him no more than what he paid for it, and that Pourie had paid the Earl of Crawford the composition, without bond from Bandoch, but that Bandoch had repaid him. It was answered, That Bandoch's oath being positive, "That the gift was to his own behoof, and not to Pourie's," nothing else in the oath could be made use of to infer a trust, as the Lords had already practised, and resolved, that after a general interrogatory deponed upon *negative*, no special interrogatory expiscating the same thing, should be allowed, least parties might be ensnared, either to swear falsely, or by inferred contradictions, to be perjured. It was replied, That the Lords had only given warrant, that after any party had upon their interrogatories taken the deposition in general,

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No. 20.
Import of an
oath relative
to a trust.