

The Lords repelled the defence, and found the debtor of the wadset was not liable for the wadsetter's ward, nor so much as the composition paid for the gift.

No. 71.

Harcarse, No. 108. p. 285.

1687. *June.*SOUTHESK *against* SINCLAIR.

Sir Robert Sinclair of Lockermacus having granted to my Lord Caithness a back-bond of reversion of an expired apprising of the lordship of Caithness, at Sir Robert's instance, obliging himself to denude upon payment of 108,000 merks to himself, and 12,000 merks to Orton; and Sir Robert having thereafter made over his adjudication to Breadalbane, upon payment of the 108,000 merks, and burdened the transmission with the reversion, in so far as concerned Orton's debt; Southesk, as come in place of Orton, pursued Sir Robert Sinclair's son upon contravention of the warrantice, by his father's so denuding himself of the adjudication.

No. 72.
Contravention of a back-bond.

Alleged for the defender: The reversion contained no obligation in favours of Orton, but was only an act of kindness in Sir Robert, which cannot be interpreted to the prejudice of his own right, to hinder to take payment before Orton got payment of his debt; nor is Orton's right prejudged by the transmission of the adjudication, which is burdened therewith.

Answered: After the back-bond, Sir Robert entered into articles with my Lord, whereby he was obliged to denude upon payment of his own debt only.

Replied: These articles were but a paper depositated in my Lord Hatton's hand upon conditions; *2do*, Whatever was in these articles, yet Breadalbane's right was, *de facto*, burdened with Orton's debt. And Orton had not apprised the lands, nor could have done any effectual diligence the time of the first back-bond, the adjudication being expired.

Duplied: Breadalbane's affairs are perplexed; and therefore the burdening his right will not so effectually secure Orton, as if the right had remained with Sir Robert.

The Lords found, That the said articles were a contravention of the back-bond. But thereafter, upon the defender's offering to purge the contravention, and dis-pone the adjudication for that effect, the interlocutor was stopped till June.

Harcarse, No. 1019. p. 289.

1687. *June.*DUNBAITH *against* BALNAGOUN.

Balnagoun having in the year 1617, granted a disposition of some lands to Sir John Sinclair of Stevenstoun, who by a back-bond, apart to Alexander Ross, trustee for Balnagoun, declared them redeemable upon payment of 25,000 merks at Whitsunday 1629, otherwise to remain irredeemable; the right of the lands came by progress in the person of Andrew Ross of Ginies, in the year 1643.

No. 73.
Double alienation.
See No. 69.