

six, found him not accountable *medio tempore*, but must have the rents for his annual-rents ay till Mr. Higgins should redeem them, by paying the 110,000 merks of the price. Two of the Lords did not think him accountable from the date of his right, but only from the citation in Mr. Higgins' declarator of trust, which interpellated his *bona fides*; whereon a new difficulty was started, to what class they were to be reduced, whether to the vote of accountable, or unaccountable, or be reputed *non liquet*, as to the state of the vote; or if it was not a medium betwixt the two extremes, unaccountable till citation, and accountable after it.

On the 16th July, 1699, the Lords, by the plurality of one vote, found Mr. Callander not accountable from the citation, but only from redemption; whereupon Mr. Higgins gave in his appeal and protest for remeid of law to the Parliament.

Fountainhall, v. 1. p. 721, 803, and v. 2. p. 21.

1697. February 18.

SIR ROBERT GRIERSON of Lag *against* The EARL of ANNANDALE.

Sir Robert Grierson charges the Earl of Annandale for payment of £.10,000 contained in his grandfather's bond in 1654, with the annual-rents since. The defence was: The Earl of Hartfield, my grandfather, in security of that debt, gave Lag a disposition to his hail moveable estate; and Lag, of the same date, delivered the Earl a factory blank in the factor's name (which empowered the Earl to fill up any body he pleased in the blank) to intromit with the moveables; so that the factor Hartfield named, giving a receipt of as much of the moveables disposed as extended to the £.10,000 bond, was always master of extinguishing the said debt by payment or compensation, at his pleasure; which evinces the bond has been originally a trust contrived to palliate the Earl's moveables from pointing, who was then, (in Oliver's time) in bad circumstances with the Government, and under great debts, especially considering that none would then have lent him £.10,000 on his single bond; and it has been now latent these 40 years, and never entered into the list, either of Lag's debts or Annandale's; and when Lag claimed other sums owing him by this family, he never mentioned this. Some of the Lords were not fully convinced of the pregnancy of these grounds, especially seeing the bond was two years prior to this disposition and factory, and that there was long minority in Lag's family, and the bond was amissing, which occasioned its lying so long over: And it was moved, that trial might be taken before answer to expiscate what farther light might be given in this affair: But the plurality carried that the factory, with the negative presumptions of taciturnity, were sufficient to instruct this bond was merely a trust and contrivance to save the Earl's moveable from his creditors.

No. 23.

No. 24.
Presumptions
of trust.

No. 24.

It is true the Lords have sometimes taken away bonds upon presumptions, as in the Duke of Hamilton's case against Cunninghame of Auchinharvie, and January 12, 1666, Executors of Stevenson against Crawford, No. 653. p. 12750. and in many others; yet the preparative of taking away a clear liquid bond in such a manner may be of dangerous consequence to the people's security.

Lag entered a protestation for remeid of law against this decree.

Fountainhall, v. 1. p. 763.

1708. *January 6.*

FRANCIS SINCLAIR, son to Thomas Sinclair, Brother to the Laird of Roslin,
against FRANCIS MAXWELL of Tinwall.

No. 25.

Trustee
bound to
communicate
advantages
acquired in
the trust
affairs.

Isobel Wauchop having right to a bond of 1,900 merks, bearing annual-rent, she left the same in legacy to Francis Maxwell of Tinwall, who had been employed as a friend by Thomas Sinclair, husband to Elizabeth Wauchop, the said Isobel's heir, to influence Isobel to dispose of that money in favours of her sister. Tinwall sometime after the testatrix's death, wrote to Thomas Sinclair, "That he had answered his commands so far as in him lay, in enjoining her to dispose of what she had to his wife, which the defunct refused; and that, rather than another should get it, he took a right in his own favours, but to show that what he did was purely for Francis Sinclair's profit, he promised him repetition of the same whenever he passed his minor years; always reserving the property to himself, in case he Francis, either disobliged his father Thomas, or took any irregular or unadvised shifts." Francis Sinclair raised upon the foresaid letter a declarator of his right to the 1,900 merks bond against Tinwall.

Alleged for the defender: That *quoad* the principal sum *non facit vim*; but seeing repetition is only promised at Francis Sinclair's majority, Tinwall should have the sum till that time, and cannot be debarred from uplifting thereof; especially considering, that Francis' right is clogged with several conditions which may happen not to exist; and in the event of their not existence, Tinwall reserves the property to himself.

Answered for the pursuer: That the defender was previously obliged by the trust, to take the right for the pursuer's behoof; and in all events, the annual-rents are presently due to him, the conditions being adjected only to the fee and property.

The Lords found that both the principal sums and annual-rents ought to be secured to Francis Sinclair at his majority; and preferred Tinwall, he finding sufficient caution to make both principal and annual-rents, in so far as he uplifts the same, forthcoming to the said Francis at his majority, upon the conditions contained in the missive; but that Tinwall should be free in case Francis Sinclair