

No 27. *ingratitude*, (*vide Tit. Cod. De revocandis donat. Massuerii Practic. Forens. Tit. De donat ; et Nicol. Mozz. De contract eod. tit.*) had lost it, because he had spoke opprobriously and contumeliously of him. THE LORDS before answer ordained the Earl to condescend upon the defamation and words of reproach.

*Fountainhall, v. 1. p. 10.*

1707. July 24.

JOHN RULE Son to JOHN RULE Apothecary in Dumfries, *against* The Children and Representatives of JOHN REID Merchant there.

No 28.

A party granted bond to three persons, narrating that at the granter's death they had accepted the oversight of his interment and curatory of his children, which would require trouble and expenses, and therefore obliged himself to pay a sum equally among the three. The bond was found to be effectual, *quoad* one of the grantees, who died a short time after he had been at the granter's burial.

THE deceast John Rule Apothecary in Dumfries, having, by his bond, dated a little before his death, narrating, that John Corbet, John Corsbie, and John Reid, had, at his desire, accepted the oversight of his interment, and Children, during their minority, which would require trouble and expenses, obliged himself to pay six hundred merks equally among them betwixt and Whitsunday thereafter, with annualrent and a penalty; and John Reid having died after he had overseen the interment of the granter of the bond, and the term of payment was elapsed; John Rule son to the granter, raised a process against the Representatives of Mr Reid, for declaring the bond null as to his part, in respect it was granted *ab causam quæ non est secuta*; John Reid having died without being at any trouble or expense in overseeing the defunct's children, which had been the main consideration for giving of the bond, since the going to his burial was a common neighbourly duty and work of humanity; so that the defenders could no more have benefit by the said bond, than if it had been granted to him for being advocate or agent, or factor to the granter's children, and he had died without performing any office of that nature, as a prentice-fee cannot be demanded when the master dies before the apprentice get any instruction.

*Answered* for the defender; The bond is a simple obligation, notwithstanding the narrative, which is neither quality nor condition thereof; for though that was the motive, it was to make no stop to the payment: And *de facto* John Reid survived the term of payment. Nor is the case of a bond for prentice-fee to the purpose; and as to a bond granted to an advocate for his service, the sum therein would be due, though the granter should have no business, and never employ the advocate.

*Replied* for the pursuer, whatever might have been pretended, if the money had been actually *bona fide* uplifted and spent, it cannot be demanded now when it is yet in the debtor's hand, and the cause of the bond never performed.

THE LORDS assolizied the defenders, and found the bond good in their favours, in regard their father had survived the term of payment, and had overseen Mr Rule's interment, and had accepted the curatory of his two children.

No 28.

*Fol. Dic. v. 1. p. 426. Forbes, p. 193.*

1724. June 23.

SIR GEORGE WEIR of Blackwood *against* WILLIAM EARL of MARCH.

SIR GEORGE having charged the Earl upon an heritable bond of pension, which he had obtained from his Lordship, for L. 150 Sterling yearly during life, which proceeded upon this narrative, 'out of the entire friendship and respect we have and carry towards Sir George Weir of Blackwood our cousin, and considering that he has the trust and management of our affairs and estate committed to him by our letters of chamberlainry, and that he has no allowance therefor granted by us, and for certain other onerous causes and considerations known to our self, &c.'

The Earl suspended and raised reduction of the bond upon the following grounds, *imo*, That the bond being granted for chamberlain-fee as the onerous cause of it, Sir George having deserted that office, could have no title to the salary; and though friendship and other onerous causes in general were mentioned in the narrative, yet these general words could go for nothing; and the particular cause assigned must be understood to be the real motive for making the deed, unless the party claiming under it could bring a proof of other onerous causes. As to the words Friendship and Respect, they might be the cause of making the salary greater than usual, but that a salary was at all granted was on account of his accepting the office of chamberlainry. *2do*, That the granting the salary to Sir George during his life was a very palpable instance of imposition, since Sir George was not on the other hand obliged to attendance during life; and in fact Sir George deserted the service.

It was *answered* for Sir George, that the principal cause of the pension was the Earl's love and affection to him, and the letters of chamberlainry were only an incidental part of it, which appeared from the pension's being during life, and was to cease in no event but of Sir George's attaining the estate of Blackwood, when he would not need such a donative: That the Earl's being *major sciens et prudens*, removed all pretence of circumvention or imposition: That Sir George had not voluntarily deserted the care of the Earl's affairs, but was violently forced away from him.

THE LORDS repelled the reasons of suspension and reduction.

Act. Arch. Hamilton, sen. Alt. Dun. Forbes. Reporter, Lord Polton. Clerk, Gibson.

*Fol. Dic. v. 3. p. 300. Edgar, p. 55.*

No 29.

An heritable bond of pension, during the grantee's life, was executed upon this narrative, 'out of the entire friendship and respect we have and carry towards the grantee, and considering that he has the trust and management of our affairs and estate committed to him, and that he has no allowance therefor granted by us.' The reason of reduction, that the grantee had deserted the office of factor, was repelled.