

either disoblige his father, or take any irregular courses, or in case he die before he be major.

No. 25.

*Forbes, p. 218.*

1710. July 12.

SIR ALEXANDER BANNERMAN of Elsick, and other Creditors of SIR WILLIAM FORBES of Monimusk, *against* The MASTERS of the QUEEN'S COLLEGE in OLD ABERDEEN and the PRESBYTERY of GARIOCH.

Mr. William Watson, Minister at Leslie, having named Mary Ramsay his spouse, his executrix and universal legatrix, and bequeathed in his testament the sum of 5,400 merks Scots to be stocked in a responsible debtor's hand, that she might enjoy the annual-rent thereof during her life-time, and the principal sum after her decease might be employed for maintaining four bursaries in the Queen's College of Aberdeen, viz. two of philosophy, to be presented by the masters, and two of divinity, to be presented by the Presbytery of Garioch; Mary Ramsay, in satisfaction of the mortification, assigned and delivered up to Sir William Forbes of Monimusk, bonds granted by David Forbes of Leslie for £.2189 to her husband, and so many other debts as exactly answered the sum aforesaid of 5400 merks, all confirmed by her in his testament; and took a back-bond from Sir William, narrating these bonds, and that assignation was granted for payment of the mortified sum; and obliging him to free and relieve her thereof, and to pay the same in so far as he should receive and uplift of the sums assigned. Sir William Forbes renewed Leslie's bonds in his own name; after whose affairs went into disorder, Sir Alexander Bannerman and others, creditors of Sir William, arrested in Leslie's hands all sums due by him to their debtor, and obtained a decree of forthcoming before the Sheriff of Aberdeen against him, upon his deponing that he was debtor to Monimusk in £.2189 in the way and manner above-mentioned. The Masters of the College, Ministers of the Presbytery, and Mary Ramsay, arrested also the debt in Leslie's hand, who suspended upon multiple-poining. At the discussing whereof, it was alleged for them, That they are preferable, because Leslie having deponed *parte referente*, that he was no otherwise debtor to Monimusk than by reason of the assignation he got to his bonds that were due to Mr. Watson, and the assignation being so qualified by the back-bond; Monimusk's right was in trust for behoof of the mortification; and his creditors can have no better right by their diligence, than their debtor had.

Answered for Sir Alexander Bannerman and other creditors of Monimusk; The patrons of the mortification have no interest in Leslie's bond, in so far as neither did Mr. William Watson make any special assignation of Leslie's debt to the mortified use; nor did the relict assign it to the patrons of the mortification, but only to Monimusk, whose faith she followed; now the old debt due by Leslie to Mr. Watson, was by innovation stated in the person of Monimusk, which his

No. 26.

Competition between arrestment, and a right arising from a back-bond declaring trust.

No. 26. creditors have duly arrested; and the patrons of the mortification have neither assignation to the new bond from Monimusk the creditor, nor have they affected it in any manner of way; for the back-bond narrates only the onerous cause why the granter became debtor for the mortified sum: And it doth not follow, That, because Leslie was debtor to the relict, and she assigned the debt to Monimusk, who became debtor to the patrons, *ergo* Leslie is debtor to them; seeing my debtor's debtor becomes not my debtor, till once I get the debt assigned to me, or affect it by arrestment; yea, as Leslie might have safely and *bona fide* paid the money to Monimusk; so his granting a new bond without any other narrative than borrowed and received, was all one as if, upon his paying down the money, Monimusk had lent it again to him; and Leslie's oath cannot prove that there was another onerous cause for his granting such a liquid bond.

Replied for the Patrons of the mortification: They do not plead their interest in Leslie's debt from the testament, but from the relict's deed, who assigned it for such an end; and the creditors of Monimusk cannot be heard to object against Leslie's oath, as not probative against them, since it was given upon their reference.

The Lords preferred the Patrons of the mortification to Monimusk's creditors.

*Forbes, p. 420.*

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1710. July 21.

LIEUTENANT COLONEL JOHN ERSKINE of Garnock, *against* SIR GEORGE HAMILTON,

No. 27.

Effect of a declaration of trust after expiry of the legal.

James Henderson, who *in anno* 1633 appraised the lands of Tulliallan from Sir John Blackadder, was in the year 1634 infeft upon a charter under the great seal. In 1637, this apprising was disposed to Mr. Robert Bruce of Broomhall, who in the year 1648, disposed the same to Edward Earl of Kincardin, Sir James Murray of Skirling, James Loch of Drylaw, and Mr. Henry Charters proportionably and *pro rata*, excepting from the warrandice, a declaration made by the disponent *in anno* 1642, declaring that Henderson's apprising was conveyed to him for the joint relief of himself, George Bruce, and John Rhind, of their cautionary for Patrick Wood, and also to the behoof of James Loch and Thomas Charters for their interest and proportionable relief of a bargain, of salt betwixt the Laird of Tulliallan and them, and other sums due by him to them. In the year 1670, Sir John Henderson of Fordel, as heir to James Henderson leader of the apprising, with consent of Sir Alexander Bruce of Broomhall, as heir to Mr. Robert Bruce his father, granted a disposition, narrating the disposition 1637, in favours of Mr. Robert, and disposing the apprising to Alexander Earl of Kincardin, in respect no resignation was made, nor infeftment expedite in favours of Mr. Robert Bruce. Upon this disposition (from the warrandice whereof the disposition 1637 is excepted) the Earl was infeft; and Colonel Erskine having right thereto as purchaser of the estate of Kincardin, pleaded preference thereupon, to all rights of the lands of Tulliallan conveyed to Sir George Hamilton.