

Stair Instit. Tit. DISPOSITION, observed, If one not infest dispone to two persons, the obtainer of the last disposition will be preferred, if the disponer's right be completed by his diligence. Besides, the Colonel founds not on the disposition 1670, as flowing principally from Mr. Robert Bruce, but as a valid right granted by the heir of Henderson who was infest, and the only person from whom a real right could be transmitted.

No. 27.

The Lords sustained the disposition of Henderson's apprising to the Earl of Kincardin *in anno* 1670, notwithstanding of the declaration in the year 1642, and the disposition in the year 1648, and therefore preferred Colonel Erskine's right derived from the Earl, to that founded on by Sir George Hamilton.

*Forbes, p. 430.*

1710. November 21. DALLAS against LEISHMAN.

Mr. Robert Dallas, writer in Edinburgh, having right to a bond of St. Martine's by a blank assignation from one Home, he fills up therein the name of one Leishman, his friend, without acquainting him, or getting any back-bond declaring the trust from him, and in his name leads an adjudication against St. Martine's; and in regard Leishman scrupled to denude, he pursues him in a declarator of trust, and refers it to his oath; who depones, that he had no interest in the writs and diligences, but his name was put in without his knowledge, and did not belong to him. This oath coming to be advised, they found Leishman had no interest, but it nowise proved that the writs belonged to Dallas, the pursuer; and ordained him to give some evidence and documents of the property of the writs; which he did by the depositions of witnesses, clerks, extracters, and others, that he carried on the processes, and expended the whole, &c. Whereupon the Lords found the trust proved. But he insisting, that Leishman should denude, and dispone the adjudication, with its grounds and warrants, he contended, that his name having been borrowed without his knowledge and consent, it was both unmannerly and unjust to involve him in a trust, without asking his leave and permission; and therefore all that Dallas could do was to take out his decree declaring the trust, as to which *non facit vim*; but to dispone might create him trouble, and put him under warrandice, and others might claim the debt hereafter, and bring him to expense. Answered, You can suffer no prejudice by denuding that wherein you pretend no interest, and no warrandice is sought but from your proper fact and deed. The Lords found he ought to denude; but least warrandice might be thought to imply *quod debitum subest*, therefore they ordained it to be explained in these terms, that he was to be nowise liable whether there was a ground of debt or not; and to indemnify him *cum omni causa*, they ordained the pursuer to pay him all the expenses he had put him to in this process, seeing he had officiously inserted his name, on the sole prospect that he would not quarrel it, because of the familiarity and friendship betwixt them.

No. 28.

A person named trustee without his knowledge refused to subscribe any d.ed. He was found obliged to denude.

*Fountainhall, v. 2. p. 599.*