

at his instance, though, as to the alternative, it be not to his own behoof. And when can a Scots protestant be straitened? Can he not find trustees without pitching on a papist? Besides, a posterior clause of the act clears up this doubt; for it discharges papists from being chaplains, schoolmasters, governors, pedagogues, tutors, chamberlains, or factors; and if incapacitated from any trust or management of affairs, then *a fortiori* this disability will reach trusts.—THE LORDS, resolving not to loose a pin of that act, found the adjudication null, though it had been originally for a protestant's behoof; and much more when it is only conveyed to him since.

If the papist's call this persecution, let them remember it comes not up to the hundredth part of their unmerciful sanguinary laws; and that experience had made this act necessary, for securing the government both civil and ecclesiastic against their vigilant and unwearied attempts.

*Fountainball, v. 2. p. 592.*

1725. *January 22.*

JOHN MURRAY of Conheath *against* JOHN NEILSON of Chaple.

JOHN MURRAY, as protestant heir, pursued a reduction of a disposition of certain lands granted to Mr Nielson's author by William Macartney, who had succeeded thereto when he was papist, and founded his action upon the 3d act of the Parliament 1700, For preventing the growth of popery. In this cause the LORDS found, 'That the defender Mr Nielson, though an onerous purchaser, could be in no better case than Macartney the alleged papist, from whom his right by progress was derived.' But it being controverted, whether Macartney, though of popish parents, had been popishly educated, in regard, as was *alleged*, he had been put to learn at protestant schools, and was taught to repeat our catechisms, and attended the church, &c; the Lords allowed an act before answer, as to the nature and manner of his education, and behaviour during his life; and, upon advising the proof, 'They found it proven that he was popishly educated, and found no evidence that he took the formula, in terms of the act of Parliament.'

There were other two defences in point of law, *1mo*, That no question could be now made as to Macartney's being popish, since the same was never moved during his life, because the defender was now deprived of the most certain mean of saving his right, and exculpating his author of popery, by getting him to take the formula; *2do*, That, by a British act, *3tio Georgii*, entituled, An act for explaining an act in a former session of Parliament, entituled, An act to oblige papists to register their names, &c. and for securing purchases made by protestants; it is enacted, for explaining King William's act for the farther preventing the growth of popery, 'That no sale for a full and valuable

No 2.

No 3.

In a reduction of a disposition of lands made by a papist, it was found, that the defender, tho' an onerous purchaser, could be in no better condition than the papist his author; and the Court repelled the following defences, *1mo*, That the papist being now dead, if the objection had been moved during his life, he might have cleared himself by taking the formula; and, *2do*, That, by an act of Parliament, it was declared, That no sale for a full and valuable consideration

No 3.  
of a real estate, by any person or owner, to any protestant purchaser, shall be avoided, by reason of disabilities or incapacities.

consideration of a real estate, by any person or owner, to any protestant purchaser, for the benefit of a protestant, shall be avoided, by reason of any of the disabilities or incapacities in the said acts incurred, or supposed to be incurred by the seller, unless before such sale the person entitled to take advantage of the incapacity, shall have recovered the lands themselves, or given notice of his claim to the purchaser, &c. And though this statute was directed upon doubts that had arisen upon an English act of Parliament, yet the statutory part was general, and being enacted by the legislature of Great Britain, it ought to affect and explain the Scots statute, which was of the same tenor with that of King William in England, for preventing the growth of popery.

It was *answered* to the 1st, That as Macartney lived till he was after fifteen years of age, and omitted to purge himself by taking the formula, it was sufficient, by the act of Parliament, to annul and void his title, or any right derived from him; and therefore it was pleadable at any time.

To the 2d, That the British act relates entirely to the English act of King William, and therefore cannot extend to Scotland.

THE LORDS repelled the defence, that a question was not moved, of Macartney's being a papist and not having taken the *formula* during his life; and repelled the defence upon the act of Parliament *tertio Georgii* in favours of protestant purchasers.

Act. Ch. Binning & Ja. Fergusson.

Alt. Ch. Areskine.

Clerk, Murray.

Fol. Dic. v. 4. p. 37. Edgar, p. 151.

1739. February 14.

SIDNEY *against* BAILLIE, and other Creditors of MAXWELL.

No 4.

THE LORDS repelled the objection made in a ranking on the act 1695 to an adjudication, that it proceeded on bills and promissory notes granted by the common debtor, who was a professed papist, and that the onerosity was not instructed in terms of the said statute; in respect the act of Parliament only respected dispositions or direct conveyances.

Fol. Dic. v. 4. p. 37. *Kilkerran*, (PAPIST.) No 1. p. 365.

\* \* \* C. Home reports this case :

SIDNEY having right to a bill and three promissory notes granted in England, by Sir George Maxwell of Orchardtown, to Morison of Prestongrange, upon which adjudication had been led against the estate of Orchardtown, after Sir George's death, brought a process of mails and duties, in order to obtain pos-