

of her jointure in favours of her son, the defender, without the consent in writing of the persons mentioned in the contract of marriage.

No 24

Clerk, Mackenzie.

Fol. Dic. v. 2. p. 82. Bruce v. I. No 129. p. 168.

1724. December 30.

JOHN CUBBISON of Cuffenoch against JOHN CUBBISON, his second son.

JOHN CUBBISON the father had taken a disposition from Sir William Gordon of the lands of Blackcraig, to himself, his heirs and assignees; but, when the charter was granted by Sir William the superior, the lands were disposed to the father in liferent, and to John the son in fee; upon this charter sasine was taken, and the father was attorney to the taking of it.

The father raised reduction of this charter, as conveying the fee to his son, contrary to the tenor of the original disposition, and without any written warrant under his hand for so material an alteration of the right, which he contended was necessary, since a right constituted by writ could not be otherways transmitted than by writ, Craig, L. 2. D. 2. § 11. Spottiswood, p. 242.

It was answered for the Son; That the father's consent to the settling of the fee in him, must be presumed from his accepting, using, and keeping the charter, especially when he acted as attorney in taking the sasine; and, as a farther evidence that he homologated this disposition of the fee, it appeared, that some years thereafter he signed a bond along with his son, in which the son was designed of Blackcraig, and this designation was not quarrelled by the father.

THE LORDS found, that the charter and sasine conveyed the fee to the son, and repelled the reason of reduction.

Reporter, Lord Grange.

Act. Ja. Boswell.

Alt. Ja. Ferguson, sen.

Clerk, Dalrymple.

Fol. Dic. v. 4. p. 77. Edgar, p. 140.

1725. December 24.

JACOB GOMES SERRA against ROBERT late Earl of CARNWATH.

JACOB GOMES SERRA having sued Robert, late Earl of Carnwath, upon his bond or obligation, for the payment of L. 8000 Sterling, laid out by him at the Earl's desire and for his behoof; the defender moved an objection, That, by reason of his attainder, he was under an incapacity to contract, or to bind himself in payment of any sums, and therefore the obligation granted by him

No 25.

A father having been the attorney in taking sasine on a charter to his son in fee, and himself only in liferent, was found barred, when after wards attempting a reduction on account of the want of his consent.

No 26.

Found, that there lay a personal objection against an attainted person's objecting his incapacity to contract.

No 26.

to the pursuer, was in law void, and could neither afford action, nor be received as evidence in any court.'

It was *answered, imo*, That attainted persons are under no incapacity to contract or bind themselves; the law has not said so: It is very true, that no person after he is convicted, or attainted of high treason, can, by deed or contract, alienate in prejudice of the Crown; but nothing hinders him to acquire by contract, or any other way, though such acquisitions will go to the Crown: And, therefore, as no person contracting with the Earl could object his attainder to save them from performance, far less is the objection competent to the attainted person himself; But, *2do*, Supposing him utterly incapable to contract, by a personal objection he is removed from objecting that incapacity, in respect that insisting in such an objection would infer a fraud and crime against him. Will he himself, or by others, receive the pursuer's money, and yet, directly against the faith of his obligation, pretend to screen himself from payment? No law will indulge such dealing. The same way a person under age, whose contracts are voidable, giving out that he is of age, or without directly affirming, managing a trade, and thereupon getting another's money or effects in his hands, will not be heard to object against his contracts; for the law says, *deceptis non decipientibus jura subveniunt*. There are many cases in our law, where a party, though the contract be void, cannot plead the nullity; and this happens in every case, where the party pleading, before he can come at the voidance of the contract, must *allegare suam turpitudinem*. And so the Lords, in a case, where two parties entering into a compromit, referring their differences to the award of one convicted of high treason, found, 'That there lay a personal objection against one of the parties who endeavoured to avoid the award, because the circumstances of the arbiter, being known to that party, at the time of his entering into that compromit, he argued his own fraud, in thereafter objecting to the arbiter's incapacity, which in effect he had renounced, when he brought his neighbour into the compromit.'

THE LORDS found, that there lay a personal objection against the defender's objecting his incapacity to contract.'

*Rem. Dec. v. I. No 64. p. 124.*

No 27.

A lawyer and trustee cannot object to the form of a bill granted by him to the person who trusted him.

1743. November 26.

Mr GARDEN of Troup *against* Mr THOMAS RIGG of Morton, Advocate.

AMONST the various questions which occurred betwixt these parties, the defender objected to two bills granted by him to Mr Arrot, that the same bore annualrent from the date, and penalty, consequently were null, conform to a late decision. (See BILL of EXCHANGE.)

*Answered*; That it deserved to be considered, whether the rule lately laid down ought to be followed with respect to bills granted long before the date