

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

of that decision, and at a time when it was vulgarly believed that such addition did not vitiate bills ;

*2do*, In this particular case a peculiar answer occurred, arising from the circumstances of the parties, which behoved to remove the objection, viz. that the defender, at the time of granting the bills in question, was Mr Arrot's friend and lawyer, so could not object to his own deed, for these bills behoved to be considered to be the defender's deeds, as much as Mr Arrot's, who was no lawyer, and trusted the defender that he would not give him an informal security for his money.

THE LORDS found, that the defender being, at the date of these bills, ordinary lawyer and trustee to Mr Arrot, was thereby debarred from objecting against the form of the bills.

*Fol. Dic. v. 4. p. 79. C. Home, No 251. p. 405.*

No 27.

1744. June 20.

WALDIE against ANCRUM.

FOUND, that where a debtor in an heritable bond adjudges his own heritable bond upon a debt due to him by his creditor, he can never plead an expired legal to carry the whole debt in the heritable bond, supposed to be greater than the debt adjudged for.

The reason is, that the moment one adjudges a debt due by himself, he is *eo ipso* free of so much of his own debt which he has adjudged, which to him is equal to payment of the debt adjudged for ; and payment which extinguishes, must of course stop the legal.

*Kilkerran, (ADJUDICATION and APPRISING.) No 15. p. 11.*

No 28.

The adjudger of an heritable debt due by himself cannot plead an expired legal.

1745. February 13.

WILSON against PURDIE.

JAMES PURDIE of Hairburnhead had a process raised against him, at the instance of the children of Samuel Purdie, his brother, whose curator he had been, and thereon was inhibited, and a decret was finally pronounced against him for L. 6000 Scots. He afterwards granted an heritable bond, on his lands of Westforth, to James Wilson of Gillies for 400 merks, to which his second son Thomas signed as consenter ; and the inference drawn from this, and what followed by Mr Wilson, is, that he had then come to a resolution to make Thomas Laird of Westforth, and that the 400 merks should be a burden thereon ; but Thomas Purdie, the defender in this cause, denied that any such consequence could be drawn, and took notice, that the bond did not bear to be with his advice and consent ; but only in the testing clause, he being called to be a witness, was designed consenter ; and if his eldest brother had been present, his consent would have been adhibited in the same manner.

No 29.

An acceptor of a gratuitous disposition to an estate cannot use a preferable right purchased by him, to the prejudice of debts charged on the estate, farther than he paid for the right.