

1745. *January 25.*Mr ROBERT YOUNG *against* ALEXANDER ERSKINE.

No 33.

An obligation to pay a salary for a prestation, was found to cease when the prestation became impossible to be performed.

THE managers of the Episcopal Meeting-house at Montrose, having, by their letter addressed to Mr Robert Young, invited him to be their assistant minister, promising him a salary of L. 30 Sterling yearly, and to continue him in that station until he should be otherwise provided for in some ecclesiastical preferment, or by some fault of his, were lawfully removed. THE LORDS, 19th December 1744, " Found the managers were no longer bound than during the subsistence of the congregation." And, on a reclaiming bill and answers, they adhered.

It being disputed whether the congregation was actually dissolved, the managers made offer to give him up the house, and let him take his hazard of what voluntary encouragement he could get, the former income of the meeting-house having been vastly more than his salary.

THE LORDS sustained this offer, and the same was accepted of.

Act. *Williamson.*Alt. *Lockhart.*Clerk, *Kilpatrick.**D. Falc. v. I. p. 57.*1757. *July 6.*FRASER *against* KING'S ADVOCATE.

No 34.

A BOND of pension granted to a person for life, and while he should continue to act faithfully as agent and doer for the granter, was found effectual, notwithstanding the granter's forfeiture for rebellion, when consequently he could no longer have occasion for an agent.

*Fac. Col.*

\*\*\* See this case, No 30. p. 4697.

1767. *July 31.*Mr ALEXANDER LOCKHART, Dean of Faculty, *against* The EARL of EGLINTON.

No 35.  
A gratuitous bond, bearing that it is a burden on a certain universal dispositive, falls by revocation of the universal disposition.

ALEXANDER, late Earl of Eglinton, upon the narrative that he had disposed his whole estates in favour of Katherine, Countess of Galloway, his eldest daughter, with power to burden, gifted and disposed to Alexander Lockhart, his grandson by another daughter, the sum of 10,000 merks, payable the first term after his decease, with which he burdened the Countess of Galloway, his universal dispositive. The deed reserves power to alter, and dispenses with delivery.

The Earl having afterwards had issue male by his third marriage, executed two entails of his estates in favour of a different series of heirs, who are expressly burdened with his debts and childrens provisions, without any mention of the bond to Mr Lockhart.

That bond had been granted in 1713, but did not come to Mr Lockhart's knowledge till 50 years thereafter, when it having been transmitted to him in a blank cover, he brought an action upon it against Alexander, then Earl of Eglinton, the son of the granter.

*Pleaded* for the pursuer; revocation of legacies and donations is not to be presumed; L. 22. D. *De probat.* L. 22. D. *De legat. 2.* Voet. *ad Tit. De legatis, num. 1.* And even, considering the bond in the light of a codicil to the settlement of the estate, the alteration of the latter would not imply a revocation of the former. Voet. *ad Tit. De jure codicil. n. 5.*

The faculty reserved in the settlement in favour of Lady Galloway, seems to be mentioned with no other view than to remove every doubt as to the powers of the granter. It cannot be supposed that the Earl intended to burden the *persona prædilecta*, and not his other heirs, so that, if failing her, any other substitute had succeeded, the donation must have been effectual.

As therefore the bond was not pendent upon the condition of the succession of Lady Galloway, who was only mentioned *demonstrative*, as the heir then intended, and who, in that character, fell to be burdened with the payment; so it cannot be affected by the alteration of that settlement. The bond is pure and absolute, and cannot be cut down by a posterior universal disposition, *ubi aliud agebatur*; as was found, 16th December 1712, Monro against Monro, No 33. p. 5052.

*Answered* for the defender, The bond does not assign any particular subject to the pursuer, which he could affect as a special legatee; neither does the Earl burden himself or his heirs general, so as that the pursuer can have action against them; the bond proceeds on the narrative of the disposition to Lady Galloway, and, as she only is burdened with it, so, upon the revocation of that disposition, the bond came to an end. It is similar to a legacy payable by a conditional institute; if the condition of the institution fails, the legacy fails also.

The question here is not, whether the bond was revoked, but whether any effectual obligation was created by it. And, at any rate, though the Earl made this bond a burden upon the provisional succession of a disponee, not *alioqui successura*, the presumption is natural, that he did not mean to impose any such burden upon the legal heir of his honours and estates, to whom he has transmitted them, without any mention of this bond.

“ THE LORDS sustained the defences, and assoilzied.”

Act. *Ilay Campbell.*

Alt. *Macqueen.*

G. F.

*Fac. Col. No 59. p. 295.*

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