

ledge they were bound, conjunctly and severally, both for principal and annual-rents, in respect of the clause of mutual relief: and that, they being so bound for the first term's annualrent, as said is, did suppose that they were so bound for the principal sum; which did supply the omission of the notary.

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1671. July 8. GEORGE IRVING *against* The DUCHESS and DUKE of BUCCLEUCH, and PATRICK SCOTT of LANGSHAW.

IN a suspension of double pointing, raised at the instance of Jean Scott, relict of John Maxwell of Broomholm, against Langshaw, as donatar to her husband's escheat, and the said George Irving, as executor-creditor to her husband, and who had obtained decret against her as intromitrix;—it was ALLEGED for Langshaw, That he had right as donatar, because Broomholm was within the regality of Langholm, belonging the Duke and Duchess of Buccleuch, from whom he had right, and to whom Broomholm's escheat did fall, as lord of the regality.

It was ALLEGED for the said Irving, That he ought to be preferred, being executor-creditor, and thereupon having obtained decret; because the barony of Langholm was not erected in a regality long after Broomholm was rebel; and his escheat fell, and so could not belong to the lord of regality, who could have no right but from the date of the erection.

The Lords preferred the executor-creditor; and found, That the donatar to a single escheat, by a gift from the lord of regality, had no right but from the date of the erection: and that the escheat, before that time, did belong to the King or his donatar, who could only pretend right and enter in competition; whereas no such gift was produced.

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1671. July 8. ANDREW and ADAM STEVEN *against* CORNELIUS NEILSON.

IN a reduction of a disposition, made by Andrew Steven to the said Cornelius, at the instance of Adam Steven, brother to the said Andrew, upon the Act of Parliament 1621, That it was done in defraud of the pursuer, who was a lawful creditor to his brother by a bond of 1000 merks; and that the disposition of the lands to Cornelius, being worth £10,000, was only made for 1000 merks, the said Cornelius being a conjunct person to his brother:—It was ANSWERED to the reason, That this reduction could not be sustained at the pursuer's instance, because the said Adam's bond was a mere donation; and the defender having charged Andrew for warrandice of his right, the said Adam had become cautioner in the suspension for his brother, who was granter thereof; *et quem de evictione tenet actio, eundem agentem repellit exceptio.*

It was REPLIED, That his being caution in a suspension could not hinder the reduction; because, if he prevailed therein, the warrandice would be taken away with the disposition, and the bond of caution did fall *in consequentiam.*

The Lords did find the answer relevant, founded upon the bond of cautionary; and that he, being cautioner for warrandice of their right, could not reduce the same upon the Act of Parliament 1621, anent divours; but prejudice to him to insist upon the reason of fraud and circumvention.

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