

fill up the years of endurance; that he could never make use of any back-bond against a third person, who was in *bona fide* to acquire a right thereto.

*Gosford, MS. No 411. p. 207.*

No 17.

1672. *June 20.*

BANNERMAN *against* CREDITORS of Mr ALEXANDER SEATON & GRAY of Haystoun.

MR ALEXANDER SEATON granted assignation to his daughter, who is his only daughter of that marriage, for implement of the contract of marriage; whereby he was obliged in case there were only heirs-female, or daughters of the marriage, to pay to them such a sum at their age of fourteen years; and therefore assigns her to a bond of L. 5000 due by Haystoun; which assignation came by progress in the person of Bannerman of Elsick: The Creditors of Mr Alexander Seaton arrest in Haystoun's hand; the competition arises betwixt the assignation to the daughter, which was long anterior, and intimated before the arrestment; and the father's creditors, who were creditors to him before the assignation to the daughter, alleged that the daughter's assignation being betwixt most conjunct persons, was fraudulent and null, and could not prejudice the father's creditors; and that the implement of the mother's contract of marriage was never sustained as a cause onerous, to prefer children to creditors; who in that case could never be secure, if such latent causes might prejudice them; especially where the time of the assignation, the father had no other means, and thereby became insolvent. It was *answered*, That albeit clauses in favour of heirs of a marriage importing that they must first be heirs, can have no effect against creditors; yet here they are only designed heirs, as being they who might be heirs, if their father were dead; but need not be actually heirs; because their sum was payable to them at their age of fourteen years; which age they were past before the assignation; and so they might have pursued their father for payment of the sums.

THE LORDS preferred the creditors arresters, the mother of this daughter being alive the time of the assignation, albeit it was alleged she was past sixty.

*Stair, v. 2. p. 86.*

No 18.

A father in implement of his daughter's contract of marriage, assigned a bond to her. The father's arresting creditors were preferred to the assignees of the daughter, tho' the assignation was intimated before the arrestment.

1681. *July 15.*

Mr JOHN CAMPBELL *against* Dr MOIR.

UMQUHILE Patrick Moir having right to the lands of North Spittel and South Spittel, as heir of his father's second marriage, and having gone abroad to the wars, Mr John Campbell, who married the sister-german of that marriage, and Doctor Moir, who was his brother of a former marriage, did agree betwixt themselves, that if Patrick should dispone these lands to his sister and Mr John her husband, that they should freely denude themselves in favours of the Doctor of the one of these lands; and the Doctor agreed, that if Patrick disposed the same lands to him, he should denude himself of the other of the said lands

No 19.

A gentleman being abroad, and having no children, two of his relations agreed privately, that if his estate was disposed to either of them, the other should have a share.