

shire to infeft him. But thereafter the Lords found he needed no new infeftment, but that his old one reconvalesced, and his retour consolidated the property with the superiority without a seasine. *Vol. I. Page 470.*

1686 and 1687. The EARL of SOUTHESK *against* SIR JOHN SINCLAIR of LOCHEND and the EARL of BROADALBINE.

1686. *March 3.*—THE case of the Earl of Southesk against the Earl of Broadalbine and Sir John Sinclair of Lochend, being reported by Kemnay; the Lords repelled the first allegiance proponed for Sir John, *viz.* that his father's back-bond is not produced, in respect of the reply that Sir John's father accepted of Broadalbine's back-bond, which was recovered out of Sir John's own hands by an exhibition before the sheriff. And, as to the other allegiance against the relevancy of the summons, the Lords declared they will hear the parties' procurators thereupon *in presentia*; for it was alleged, that Broadalbine's back-bond, mentioning Sir Robert Sinclair's back-bond, did not prove, unless Sir Robert's back-bond were produced, *quia non creditur referenti nisi constat de relato, et falsa causa seu demonstratio non nocet*; as if I should leave Titius £100, because he procured me such a gift from his Majesty, and find afterwards it was not he, but another, he cannot claim it. Yet, here, the Lords found it sufficient, *quia verba narrativa fidem faciunt contra profertentem et acceptantem.*

And, on a new hearing on the 17th of March, the Lords found Broadalbine's back-bond instructed against Sir Robert and Sir John Sinclair, but not against Broadalbine, till Sir Robert's back-bond were produced. *Vide 25th November 1686. Vol. I. Page 407.*

1686. *November 25.*—The case of the Earl of Southesk and Sir John Sinclair, mentioned 3d March 1686, was heard in presence. It was ALLEGED,—That the clause in Sir Robert Sinclair's back-bond to the Earl of Caithness, that, he being paid and Walter Innes of Orton relieved, he should denude, did not tie him to see Orton paid, but was of the nature of a perpetual reversion, and that he should not transmit it without the burden of Orton's debt; which he had done; but did not hinder him to take payment to himself. ANSWERED,—The clause was copulative, and could have no sense, but would be frustraneous and elusory, unless it had been a security for Orton, who, by relying on this, having forborne to do diligence, or to comprise, must not be prejudged; and that the nicety of the Roman law, *quod non licet alteri stipulari*, (which was introduced *ut unusquisque sibi acquirat, non alteri*,) was abrogated by the equity of the canon law and our customs; whereby clauses might be inserted in favours of a third party, though not a contractor.

The Lords having advised this debate, on the 10th of December, they repelled the allegiance proponed against the pursuer's title, though this relief was not *expressim* comprised; *omne jus* in general being enough. And found, that the comprising led against Innes of Orton gave Southesk sufficient interest to insist in this process; but find that Sir Robert Sinclair's disposing the right

of the adjudication, with the burden of his back-bond, was no contravention of his back-bond; and therefore assoilyied Sir John Sinclair, reserving action to the pursuer against the Earl of Broadalbine, as accords. See this altered 17th Feb. 1687. *Vol. I. Page 430.*

1687. *February 17.*—Earl of Southesk against Sir John Sinclair, mentioned 25th November 1686. The Lords now find Sir Robert Sinclair had contravened his back-bond in favours of Orton, by subscribing the articles where Orton is left out; and therefore decerned against him. *Vide 12th July 1687. Vol. I. Page 448.*

1687. *July 12.*—The Lords advised the Earl of Southesk's pursuit against Sir John Sinclair, mentioned 17th Feb. 1687; and, in regard the adjudication on Caithness's estate, and the comprising, were for different sums, the President and Lords were for assoilyieing Sir John; but however it was carried, to gratify Southesk, that, before answer to the debate, both Southesk and Sir John should, in this same process, insist against the Earl of Broadalbine, to make the debt real upon the estate of Caithness, notwithstanding it was adjudged from Broadalbine by his creditors. But they were not here *in campo*, nor called. *Vide 26th July 1687. Vol. I. Page 465.*

1687. *July 26.*—Sir John Sinclair and the Earl of Southesk having insisted, in their declarator against the Earl of Broadalbine, on his back-bond, as mentioned 12th July 1687, and that the real right of Caithness was affected with it, and with Innes of Orton's debt, and the property transmitted with that burden; the Lords declared in terms of the libel, Broadalbine's lawyers declining to answer. But afterwards, on a bill, this was stopt. *Vol. I. Page 470.*

1687. *July 27.* The DUKE of HAMILTON *against* ———.

DUKE Hamilton pursuing ——— for non-entry, he alleged that he had a precept of *clare constat* and seasine thereon; but they were lost.

The Lords, before answer, ordained the notary and witnesses to be examined thereon, if they truly gave the seasine, to the effect they might consider if it should stop the non-entry. *Vol. I. Page 470.*

1687. *July 27.* ROBERT MALLOCH *against* JOHN INGLIS.

JOHN Inglis, advocate, having caused print the process betwixt him and Robert Malloch, wherein he brands him as a cheat and falsery; Robert gave in a bill to the Lords, complaining of the abuse and defamation.

The Lords called for John Inglis to give him a reprimand, and to cause him crave Malloch pardon; and, in regard he absented, they ordained him to be apprehended and imprisoned, and deprived him of his office as an advocate.

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