

No. 24.

It is true the Lords have sometimes taken away bonds upon presumptions, as in the Duke of Hamilton's case against Cunninghame of Auchinharvie, and January 12, 1666, Executors of Stevenson against Crawford, No. 653. p. 12750. and in many others; yet the preparative of taking away a clear liquid bond in such a manner may be of dangerous consequence to the people's security.

Lag entered a protestation for remeid of law against this decree.

Fountainhall, v. 1. p. 763.

1708. *January 6.*

FRANCIS SINCLAIR, son to Thomas Sinclair, Brother to the Laird of Roslin,
against FRANCIS MAXWELL of Tinwall.

No. 25.

Trustee
bound to
communicate
advantages
acquired in
the trust
affairs.

Isobel Wauchop having right to a bond of 1,900 merks, bearing annual-rent, she left the same in legacy to Francis Maxwell of Tinwall, who had been employed as a friend by Thomas Sinclair, husband to Elizabeth Wauchop, the said Isobel's heir, to influence Isobel to dispose of that money in favours of her sister. Tinwall sometime after the testatrix's death, wrote to Thomas Sinclair, "That he had answered his commands so far as in him lay, in enjoining her to dispose of what she had to his wife, which the defunct refused; and that, rather than another should get it, he took a right in his own favours, but to show that what he did was purely for Francis Sinclair's profit, he promised him repetition of the same whenever he passed his minor years; always reserving the property to himself, in case he Francis, either disobliged his father Thomas, or took any irregular or unadvised shifts." Francis Sinclair raised upon the foresaid letter a declarator of his right to the 1,900 merks bond against Tinwall.

Alleged for the defender: That *quoad* the principal sum *non facit vim*; but seeing repetition is only promised at Francis Sinclair's majority, Tinwall should have the sum till that time, and cannot be debarred from uplifting thereof; especially considering, that Francis' right is clogged with several conditions which may happen not to exist; and in the event of their not existence, Tinwall reserves the property to himself.

Answered for the pursuer: That the defender was previously obliged by the trust, to take the right for the pursuer's behoof; and in all events, the annual-rents are presently due to him, the conditions being adjected only to the fee and property.

The Lords found that both the principal sums and annual-rents ought to be secured to Francis Sinclair at his majority; and preferred Tinwall, he finding sufficient caution to make both principal and annual-rents, in so far as he uplifts the same, forthcoming to the said Francis at his majority, upon the conditions contained in the missive; but that Tinwall should be free in case Francis Sinclair

either disoblige his father, or take any irregular courses, or in case he die before he be major.

No. 25.

Forbes, p. 218.

1710. July 12.

SIR ALEXANDER BANNERMAN of Elsick, and other Creditors of SIR WILLIAM FORBES of Monimusk, *against* The MASTERS of the QUEEN'S COLLEGE in OLD ABERDEEN and the PRESBYTERY of GARIOCH.

Mr. William Watson, Minister at Leslie, having named Mary Ramsay his spouse, his executrix and universal legatrix, and bequeathed in his testament the sum of 5,400 merks Scots to be stocked in a responsible debtor's hand, that she might enjoy the annual-rent thereof during her life-time, and the principal sum after her decease might be employed for maintaining four bursaries in the Queen's College of Aberdeen, viz. two of philosophy, to be presented by the masters, and two of divinity, to be presented by the Presbytery of Garioch; Mary Ramsay, in satisfaction of the mortification, assigned and delivered up to Sir William Forbes of Monimusk, bonds granted by David Forbes of Leslie for £.2189 to her husband, and so many other debts as exactly answered the sum aforesaid of 5400 merks, all confirmed by her in his testament; and took a back-bond from Sir William, narrating these bonds, and that assignation was granted for payment of the mortified sum; and obliging him to free and relieve her thereof, and to pay the same in so far as he should receive and uplift of the sums assigned. Sir William Forbes renewed Leslie's bonds in his own name; after whose affairs went into disorder, Sir Alexander Bannerman and others, creditors of Sir William, arrested in Leslie's hands all sums due by him to their debtor, and obtained a decree of forthcoming before the Sheriff of Aberdeen against him, upon his deponing that he was debtor to Monimusk in £.2189 in the way and manner above-mentioned. The Masters of the College, Ministers of the Presbytery, and Mary Ramsay, arrested also the debt in Leslie's hand, who suspended upon multiple-poining. At the discussing whereof, it was alleged for them, That they are preferable, because Leslie having deponed *parte referente*, that he was no otherwise debtor to Monimusk than by reason of the assignation he got to his bonds that were due to Mr. Watson, and the assignation being so qualified by the back-bond; Monimusk's right was in trust for behoof of the mortification; and his creditors can have no better right by their diligence, than their debtor had.

Answered for Sir Alexander Bannerman and other creditors of Monimusk; The patrons of the mortification have no interest in Leslie's bond, in so far as neither did Mr. William Watson make any special assignation of Leslie's debt to the mortified use; nor did the relict assign it to the patrons of the mortification, but only to Monimusk, whose faith she followed; now the old debt due by Leslie to Mr. Watson, was by innovation stated in the person of Monimusk, which his

No. 26.

Competition between arrestment, and a right arising from a back-bond declaring trust.