

1725. *July 8.* JOHN CALLENDAR of Craigforth and Others, *against* HENRY ALLAN, and DAVID MACCLELLAN.

SIR JAMES COCKBURN of that Ilk, and Sir Robert Miln being creditors to Riddel of Kinglass by personal bonds, and having used inhibition and horning against him, they obtained a gift of his liferent escheat.

Walter Riddel having led an adjudication against the lands of Kinglass, he and the said Sir James, and Sir Robert entered into a contract, anno 1682, whereby it was agreed, that in case of a sale of these lands, Sir James and Sir Robert should be preferred for their debts; and they were to make no use of their gift of escheat, nor was Walter Riddel ever to obtrude his adjudication against them.

Fairholm of Pilton came to have right by progress to Riddel's adjudication, and thereupon sold the lands to the Dutchess of Hamilton, and received the price.

Sir William Cockburn was assigned to Sir James's interest, and Sir George Hamilton to Sir Robert Miln's; and Sir George adjudged the lands in the year 1691.

Sir William and Sir George pursued Fairholm of Pilton as personally liable for their author's debts, in so far as he had received the price of the lands of Kinglass, which he had sold in virtue of Riddel's adjudication; which being then only personal, and no infetment on it, was burdened and qualified with a preference to their debts by the contract 1682.

In this process they prevailed; the price of the lands of Kinglass being found subject to the payment of the sums for which their authors stood preferred; and Mr. Fairholm, as having sold these lands, was found personally liable therefore.

Craigforth, as creditor to Sir George, arrested his share of the price in Mr Fairholm's hands; and Messrs. Allan and Maccelellan being also Sir George's creditors, used inhibition against him, and adjudged the lands of Kinglass, and any interest Sir George had in them.

There happened a competition betwixt the arrester and these adjudgers, concerning the share of the price that was found due by Mr. Fairholm to Sir George Hamilton.

It was PLED for Craigforth the arrester,—That the subject in Mr. Fairholm's hands being personal and moveable, an arrestment was the only habile and proper diligence for affecting it; for the medium upon which Mr. Fairholm was made personally liable, as intromitter with the price of the lands of Kinglass, was the personal contract in the year 1682.

It was ANSWERED for the adjudgers,—That the debt to which Sir George had right on the estate of Kinglass, was heritably secured by adjudication, and therefore was not arrestable, but must be carried by their adjudications; as in the case of *Lockhart against Lord Bargeny, 22d February, 1666*: and it made no difference, that the sum was to be paid out of the price of lands; for till payment the securities still remained in the person of the creditor, and such as could convey the real right affecting the lands to the purchaser for the security of his purchase, which the adjudgers only could do.

The Lords found the price of the lands of Kinglass, ought to be made forthcoming to the creditors adjudgers preferable to the arresters.

Act. Arch. Murray. Alt. Alex. Hay. Lord Forglen, Reporter.
Mackenzie, *Clerk.*