

For the defenders: This interpretation might have some appearance, if the right were given to the whole under this irritancy; but the trust is only in favour of such as the trustees should compound with. There was no intention of paying the whole creditors, or their whole debts; but the trustees were, upon consideration of their several cases, to make the distribution; and none could complain of being paid too little, but behaved to take what was given him.

For the pursuers: The power of compounding was only in the view of there not being sufficient funds to answer all the creditors; but if there were, they were to pay the whole. This appears from their being liable for the residue to the executors of the Duchess, who could not claim it till all were paid. The present pursuit was not by any creditor seeking to establish himself a preference, but by the whole jointly, demanding an account of the trust-subjects.

The Lords found the action was competent.

Act. *H. Home & Lockhart.*

Alt. *R. Craigie & Ferguson.*

Clerk, *Kirkpatrick.*

*D. Falconer, No. 211. p. 291.*

1748, June 8, & July 6. GORDON against ANDERSON.

An assignee in trust, in order to adjudge, having, after the sale of the lands, got partial payments from the purchaser, and, because the scheme of division was not then made, granted his bills for the money; in a process against the purchaser, at the instance of the persons for whose use the adjudication was led, the Lords "Found the purchaser could have no allowance of those payments;" although it was evident, from the circumstances of the case, that between the trustee and purchaser these bills were intended as no other than an interim instruction of so much of the price of the lands; and *that* notwithstanding a former decision in the case of the Creditors of Pittedie, where, in the like case, such bills had been sustained as payments to the purchaser.

*Kilkerran, No. 3. p. 582.*

1752. December.

ARCHIBALD CAMPBELL against CAMPBELL of Monzie and CAMPBELL of Achalader.

Mr. Archibald Campbell, Minister at Weem, made a deed of mortification, in which he settled his funds upon five trustees, and their successors, for the use of the schoolmaster of Weem, and of other schoolmasters to be settled in the parish at the places therein named, the sums to be secured and employed in name and for the use of the schoolmasters; and the major part of the trustees are declared a *quorum*. Two of the trustees only having accepted and intromitted, the sums

No. 39.

No. 40.

Bills granted to a purchaser, by a trustee, for the purpose of adjudging, not sustained as proof of partial payments against his constituents.

No. 41.

A deed of mortification for the use of the schoolmaster of a parish, stands good though none of the trustees accept.