

SECT III.

Clauses in Deeds in favour of third parties.

No 16.

▲ purchaser of lands was taken bound to pay a part of the price to certain creditors of the seller. They were found entitled to use inhibition upon this right.

1627. *January 9.*

— against NIMMO.

THIS day a supplication was given to the Lords by some persons, in whose favour some clauses were conceived and introduced by a contract betwixt Heron and Nimmo; in the which contract, Heron having sold some lands to Nimmo, Nimmo was obliged to pay the sums contained therein for the price of the land disposed to the said persons, who craved inhibition against the said Nimmo, upon the foresaid clause introduced in their favour; and it being doubted if they might crave the said inhibition, seeing the said contract was not subscribed by them, neither were the parties contractors therein, nor in the inhibition craved by any of the contractors; the LORDS found that the said persons, notwithstanding they were not contractors, might seek inhibition upon the clause foresaid, conceived in their favour, against the party obliged by the contract, to perform the same to them. John Dunlop was procurator for the supplicants, and caused raise and seek this inhibition.

Fol. Dic. v. 1. p. 512. Durie, p. 253.

No 17.

A purchaser of lands was taken bound to pay a part of the price to a creditor of the seller. This was found a delegation in favour of the creditor, not a mandate which could be recalled.

1664. *July 7.*

OGILVIE and GRANT against KER.

THERE being a charge in the name of James Ogilvie and William Grant *contra* Mr Andrew Ker minister, on this ground, that by a minute of contract of alienation, Ogilvie had sold to Ker certain lands, and Ker was expressly bound by the minute to pay this Grant and others, in part of the price of the land, certain debts due by Ogilvie to them; Ker suspends, upon this reason, that he had satisfied Ogilvie, and obtained his discharge.

Grant *answered*, That by the foresaid clause contained in the minute, he had acquired right to the sum in satisfaction of his debt, which Ogilvie his debtor could not take away, without his consent, especially seeing the minute took effect; and the suspender, by his missive letters, after the date of this discharge wrote to the Laird of Pitmeddin, who was cautioner to Grant, that he would satisfy the debt. The suspender *answered*, That the clause in favour of Grant, who was no contractor, could not give him a right; *imo*, Because it was never a delivered evident to Grant; *2do*, Because it was but a mandate, whereby Ogilvie the contractor did order a part of the sum to be paid to Grant, which Ogilvie might recal at his pleasure, as he might have annulled the bargain, and