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contract, was, that Mary Crawford had a faculty reserved to burden the lands, as well as the person of the disponee, with the payment of 8000 merks; but, he could not see that she had actually exercised it, far less in favour of whom, or in what manner.

A faculty or power to burden land, must be exercised in a manner consistent with the feudal principles, and the security of the records, otherwise it can have no effect against third parties, or to constitute a real charge. The law has appointed no record for bonds granted in pursuance of reserved powers; and, therefore, if such powers could be exercised by mere personal bonds, without infestment, so as to affect the lands, and to be good against singular successors, the greatest embarrassment would ensue. Accordingly, from the Decisions, *vide* FACULTY, it will be seen, that this Court has never, at any period, sustained a personal bond referring to a faculty, as sufficient to constitute a real burden upon lands; 8th July 1760, the younger children of James Henderson against the Creditors of Francis Henderson, No 27. p. 1441.

The Judgment pronounced by the Lord Ordinary, and which was afterwards adhered to by the Court, was as follows:

“FINDS, that the 8000 merks Scots, disposed by Mary Crawford to her daughters, were moveable *quoad* the said daughters, and descended to their nearest of kin, and not to their heirs; and, therefore, sustains the objections to the pursuer's title, assoilzies the defenders, and decerns; reserving to the pursuer to insist in a proper process against the defenders for such share of the said sum as belongs to him, as one of the nearest of kin to his deceased sisters”.

Act. Macqueen.

Alt. Hay Campbell.

Clerk, Tait.

Fol. Dic. v. 4 p. 65. Fac Col. No 120. p. 321.

 S E C T. III.

Paction by Declarators, Back-bonds, &c. relative to Personal rights;
when real; when personal?

1630. March 24. MAXWELL against LORD HARRIES.

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A singular
successor to
the creditor
in a bond,
was found not
subject to a

THE LORD HARRIES being bound to one Maxwell by an heritable bond, in a sum of money, and to be paid upon requisition, which requisition was expressly contained in the bond, ought to be made by the advice of persons therein named, and no otherwise; this bond being comprised by a creditor of the said Maxwell, who required the Lord Harries to pay him, as compriser, succeeding

in the said Maxwell's place and right, and thereupon the Lord Harries being charged, who suspended upon the clause in the bond, that requisition was not made by advice of the friends named in the bond, as ought to have been done, and without which he was not subject in payment;---the LORDS found, that seeing this bond was comprised by the creditor of Maxwell, which compriser was become singular successor to her, that he was not subject to that clause, to make a requisition by the consent of these friends, who were adjoined to the personal requisition, which might have been made by that creditor, in case the right of the sum had subsisted and remained with her; for that cause being set down for personal respects to take away the power from the woman, to dispoise or uplift the sum without the advice of these persons, could not go out of her own person to affect the singular successor, and to bind him to seek their concurrence thereto, whereto she was tied; and it was not respected what the suspender answered, that the compriser could not have the right otherwise transmitted to him, than his debtor had the same herself, which being so affected to herself, behoved to remain so to every one claiming her right, osherwise that condition would be elusory, and was unprofitably adjected, for then she might have made one assignee thereto, and so if the condition should not bind every one who should obtain that right, the assignee, albeit to the debtor's own use, might frustrate the meaning of the bond, and, without the friend's advice, lift up the sum, and thereafter restore the same to her, to be used at her pleasure, which were against the intention of the bond; attour that clause is not simply conceived in favours of the creditrix, but it is also introduced in the debtor's favours, who possibly would not have given the bond otherwise, but with this express condition; notwithstanding of all which the requisition and charge thereon was sustained, but the execution was delayed to a term thereafter, against which the debtor might provide to pay the money.

Act. _____.

Alt. *Belbés.*Clerk, *Hay.**Fol. Dic. v. 2. p. 63. Durie, p. 514.*

1635. December 23.

KEITH and L. GLENKINDIE against IRVIN.

ALEXANDER IRVIN of Fortrie being obliged by contract betwixt him and Patrick Gordon of Kincaraigie, to grant to him in his name, but to Patrick Keith's proper use, two bonds, the one of 400 merks, the other of 500; in which contract the said Patrick Keith is also bound to deliver to the said Alexander Irvin certain bolls of victual; according to which contract, the said Alexander Irvin having subscribed the said two bonds to the said Patrick Gordon, wherein no relation was made to the said contract, nor bore to be done to the behoof of the said Patrick, but two pure and simple bonds of borrowed money, to which two

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clause in it inserted for purposes merely personal.

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Compensation was sustained against an onerous assignee, where the debt existed before the assignation, and was contained in the contract on which the bond assigned depended.