

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

No 20.

clause in it inserted for purposes merely personal.

No 21.

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.

No 21.

bonds the said Patrick Gordon having made Keith and L. Glenkindie assignees, and they charging thereupon the said Alexander Irvin to pay, he suspends upon compensation of the victual owing by the said Patrick Keith to him, conform to the said contract, which was the ground of the bonds whereupon he was now charged, and which compensation, he alleged, ought to be received against these assignees, as it might be received against Keith his debtor, or against Gordon their cedent, who acquired the right of the bonds, albeit in his own name, yet to the behoof of Keith, as was appointed by the contract; and albeit the bonds be pure and simple, and neither make mention that they are given to the behoof of Keith, nor yet depend upon the contract; whereby it was alleged, that this reason of compensation cannot be received against these chargers, who are true creditors to Gordon, and who seeing the bonds in their debtor's name, and to be simple, not affected with any quality or condition, were in *bona fide* to take assignation thereto, and ought not to be prejudged by any other bargain betwixt this suspender and the cedent; likeas they alleged, that the compensation cannot be received against them who are assignees for a true just debt owing to them; and so much the rather, because the debt owing to the suspender by Keith, is only liquidate since they were made assignees, and since their charges executed thereon, and since the time that they obtained protestation against a prior suspension raised in this same matter; notwithstanding of which allegiance, the LORDS found the reason of compensation relevant, as well against the assignee as against the cedent, and found it would have militated against the cedent, as if Keith's name had been insert in their bonds, in respect, albeit, the bonds were simply made to Gordon, yet the same behoved to be reputed conform to the contract, to be made to the use of Keith, who was the suspender's debtor; seeing it could not be qualified that there was another cause, whereupon the said bonds were given to Gordon the cedent; and albeit, the debt was liquidated since the charge, yet the compensation was relevant, seeing the debt was existant before the assignation, and was contained in the same contract, which was the ground whereupon the said two bonds depended, as said is.

Act. Nicolson & Davidson.

Alt. Gilmour.

Clerk, Gibson.

Fol. Dic. v. 2. p. 63. Durie, p. 787.

1636. July 21.

KING against DOUGLAS.

No 22.

A liferenter disponed his right to the fiar, taking a back-bond to relieve her of the debt of a former fiar. This found

ONE Janet Douglas relict of James King, being liferenter of a certain sum whereof her son had the right of fee, which Janet dispones to her said son the liferent thereof, and at the very time of the disposition, the same day before the same writer and witnesses, receives a bond from her son, by the which he obliges him to relieve his mother of her Husband's, his father's whole debts, and if he did not, that he should repone her to her own place against