

S E C T. IV.

Granting Bonds, and taking Discharges of the same date.

1665. December 4. THOMSON against HENDERSON.

No 28.

A bond being granted and discharge of it taken of the same date, the Lords presumed it to be done *dolose*, unless the debtor could condescend upon some reasonable cause for doing so.

THOMSON having granted a bond to his brother of a sum of money, the same was assigned to Henderson, who thereupon charged. The debtor suspends, and produces a discharge by the cedent of the same date and witnesses with the bond, and *alleged* that the debt being discharged before the assignation, excluded the assignee. Is was *answered*, That the discharge was granted most fraudulently, so that the fraud betwixt the two brethren, is manifest to have been contrived to deceive any person should contract with the creditor, whom they saw to have a bond of a *solvendo* person in his hand, and so might be induced to lend him money, or contract with him in marriage, or otherwise; and the charger having upon that account lent him money, and taken assignation, cannot be excluded by this contrivance, which was done *pessimo dolo*. It was *answered*, *imo*, That *dolus* was not competent by way of reply. *2do*, That the assignee took the assignation on his own peril, and he should have asked at the debtor before he took it.

THE LORDS, though the matter was of small importance, were willing to take the matter of fraud to consideration by way of reply; and therefore ordained the suspender to condescend upon some reasonable cause of the granting of the bond, and taking back a discharge thereof at the same time.

Fol. Dic. v. I. p. 333. Stair, v. I. p. 320.

No 29.

1680. January 21. CADDELL against RAITH.

It was found a fraudulent contrivance betwixt a father and son, that at the time of the son's contract of marriage, he promised to discharge the provisions due to him by the contract, and that accordingly a discharge was granted before the marriage and after the contract, and renewed after the marriage without any satisfaction; and this at the instance of the son's creditors, who had contracted with him *bona fide* upon their knowledge of the contract of marriage.

Fol. Dic. v. I. p. 333. Stair.

* * See this case, No 64. p. 4275.