

No. 11. to his own behoof; but if he were extending the gift to other lands of the rebel's, that might be presumed to the rebel's behoof, because the donatar had no anterior interest of his own to these lands. It was answered, That if the rebel had given the money to purchase the right before it was purchased, it would infer unquestionable simulation; and it is wholly equivalent, that having then the rebel's money in his hand, the rebel *ex post facto*, allowed the expenses of the gift; 2dly, Albeit such an allowance *ex post facto*, would not be sufficient, where the donatar acquired the right to the lands *bona fide*, and then *ex necessitate* behoved to purchase the gift to maintain his right; but here the donatar was *in pessima fide*, and most unfavourable, because if need be, it is offered to be proved by his oath or writ, that he knew of George Hamilton's right, and that the same was complete before he bought from the common author, and so is *particeps fraudis* with his author, in granting double rights contrary to law; and therefore the presumption of simulation and fraud, ought to proceed against him upon the more light evidence.

The Lords found the ground of simulation not relevant, upon taking allowance from the rebel of the price, if it was done for the maintaining of a right *bona fide* acquired; but found that it was sufficient to infer simulation, if the right was *mala fide* acquired; and that the donatar, at, or before he bought the land, knew of the other party's right.

Stair, v. 1. p. 621.

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1672. January 24. BOYLSTON against ROBERTSON and FLEMING.

No. 12.

A person receiving money to buy goods for another, having bought and received them in his own name, without mention of the truster, the property was found to be in him, and his creditors arresting were preferred.

Stair.

\* \* \* This case is No. 6. p. 15125. *voce* SURROGATUM.

\* \* \* This decision has been considered to be erroneous.—See p. 13439.

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1673. February 21.

JAMES RAE against ALEXANDER GLASS of Sauchie.

No. 13.

A person trustee on one subject who buys in a right, which might, in other hands, compete with the right in which he is trustee, must

In the count and reckoning betwixt the said parties, there being an article of discharge given in, craving deduction of £.8000, in so far as Sauchie before ever he recovered payment of any part of the sums assigned to him by James Rae, he did advance out of his own means 4300 merks, whereby he purchased a right to a prior comprising led against the Earl of Loudon's estate, which did extend to the payment of the said £.8000, and therefore he ought to have the benefit thereof, and that interest could not be charged upon him as accountable therefore; but the said right ought to be looked upon as Sauchie's own purchase with