

destroyed the writ; especially seeing nothing had yet followed; and as for the letters, they were not written to Grant but to a third party.

THE LORDS found, that seeing the bargain took effect, the clause in Grant's favour was not a simple mandate but a delegation, whereby Ogilvie constituted Ker his debtor, to be debtor to Grant his creditor, which needed no intimation, being contracted by, and so known to Ker himself; and therefore found Ogilvie's discharge ineffectual.

*Fol. Dic. v. 1. p. 512. Stair, v. 1. p. 209.*

No 17.

1714. February 10.

MR WILLIAM CARMICHAEL Advocate, against GEORGE WILSON of Sands.

No 18.

Found in conformity with No 16. and No 17. p. 774<sup>o</sup>.

MR GEORGE LESLY donatar of the escheat of Mr Robert Craig of Riccarton, assigned the gift to Alexander Glass, writer to the signet, upon his back-bond, declaring the assignation to have been granted to him in trust for the behoof and relief of Sir Robert Forbes, Alexander Deuchar, and Mr James Oliphant of Langton of some particular debts mentioned in the back-bond for which they were cautioners for Mr Lesly. Mr William Carmichael having afterwards obtained a gift of the escheats of Mr Lesly, Sir Robert Forbes, and Alexander Deuchar, insisted on a special declarator against Alexander Glass to denude in his favours of the trust. Compareance was made for George Wilson, who craved preference, upon this ground, that he, as cautioner for Sir Robert Forbes and Deuchar, had paid to Lothian one of those debts for the relief whereof the assignation was made to Mr Glass. So that all the security in their persons for relief of that debt accrued to him who paid *ex mandato*, and in name of Sir Robert Forbes and Deuchar, just as if they had paid it themselves.

*Answered*; *imo*, Sir Robert Forbes, or Deuchar had paid the debt, and were claiming preference; Mr Carmichael, as donatar to both their escheats, would be preferred on their preference; *2do*, The privilege in the back-bond being personally conceived in favours of Sir Robert Forbes and Alexander Deuchar, it cannot be extended to other persons not therein mentioned; and, though Wilson, by paying the debt, became creditor to them, he hath no privilege but must come in among the other creditors conform to his diligence; because personal privileges *quæ non egrediuntur personam* are not extended to cautioners, L. 1. § 2. *D. De constit. princip.* And it was found in the competition of the Creditors of Langton, that even a public infestment of relief to a cautioner did not accrue to the creditor for whose debt it was granted, but was so personal to the cautioner that he might renounce it at his pleasure. *Stair, lib. 2. tit. 3. § 27. See No 11. p. 33.*

THE LORDS found that Alexander Glass's back-bond, binding and obliging him for relief and re-payment in favours of Sir Robert Forbes, Langton, and

No 18. Alexander Deuchar, and not in favours of the creditors to whom they stood engaged as co-principals or cautioners; Mr William Carmichael, as donatar to the escheat of Mr George Lesly, Sir Robert Forbes, and Alexander Deuchar, has right to Glass's obligation in the said back-bond, and not Wilson of Sands, who came in place of Mr Lothian, one of the creditors, proportionably to his interest.

*Fol. Dic. v. 1. p. 512. Forbes, MS. p. 25.*

No 19. 1729. February. GOLDIE of Haughyet *against* Mr ANDREW AITKEN, &c.

A PERSON disposed his estate in trust, and took the trustee's back-bond, obliging him to sell the same, and apply the price for satisfying the disponent's creditors, and the remainder to be applied to the disponent's wife and children. The lands having been sold in execution of this trust, a part of the price remaining in the trustee's hand, was confirmed by an executor-creditor of the disponent, as *in bonis defuncti*. It was found, that this confirmation could afford no ground of preference in competition with the other creditors, seeing there was somewhat further intended in this transaction than a bare commission to the disponent for the behoof of the disponent; the back-bond bore that the disposition was granted in order that the price might be applied to the creditors, which argued that the disponent had a view to his creditors, and was stipulating for their security. See APPENDIX.

*Fol. Dic. v. 1. p. 512.*

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#### SECT. IV.

Among third parties having an Interest, who is preferable?

No 20.

When an obligation given to clear incumbrances specifies some of them particularly by name, and then subjoins a general clause of all other incumbrances, those particularly named are preferable.

1635. February 5. KER *against* KNOWS.

IN this cause, which is mentioned January 29. 1635, No 36. p. 699, *voce* ARRESTMENT, it was *alleged* by KNOWS, that he could not pay to the pursuer the sums acclaimed, as being arrested in his hands, and as addebted to him by Craw; because, by the bond produced, whereby he is constituted debtor to the said Craw, it is provided, that the said Craw, his creditor, should pay, and employ the same for relief of two sums addebted by the said Craw to two of his creditors, who had served inhibition against the said Craw, their debtor, before the alienation of the land made by the said Craw to this defender (and