

*Alleged* for Walter Monteith; The assignation bearing to have been granted for an equivalent sum then advanced, he a trading merchant, was *in bona fide* to trust the assignee, and not obliged to know of any private latent back-bond, industriously granted to tempt and ensnare persons to lend money to Leckie. And the LORDS are in use to discourage such fraudulent practices; Thomson against Henderson, No 28. p. 4906.; Jackson against Mason, No 32. p. 4911.; Reid of Ballochmyle against Reid of Dalvelling, No 33. p. 4923.

*Answered* for Captain Douglas; No respect to the inconveniency, that Monteith could not know of the backbond; seeing the same may be pretended against discharges, or grounds of compensation, which are as latent, and yet affect singular successors.

THE LORDS found, that the back-bond doth restrict, affect and qualify the assignation; and therefore preferred Captain Douglas.

*Forbes, p. 438.*

1747. December 9. LADY KINMINITY against SIR JOHN GORDON.

GEORGE MURRAY of Polrossy granted an heritable bond to Sir John Gordon of Embo, for 20,000 merks Scots; whereupon he was infest 1722, and assigne it to Gordon of Garty, who never compleated his title by infestment, but, 1729, adjudged the estate for this, and a further debt of 2000 merks, on which neither was he infest; but having, 1731, borrowed L. 6000 Scots from Robert Gordon, brother to Sir John, he obliged himself to infest him in an annualrent, correspondent thereto, out of the said sum of 20,000 merks, assigning him to as much thereof, and of the annualrent due to him therefor, as would satisfy the said annualrent of L. 6000, and this right came into the person of Sir John Gordon, by succession to Robert.

Alexander Sutherland of Kinminity, 1734, purchased from Gordon of Garty, this heritable bond and adjudication, and transferred in trust for himself to Gordon of Bucky, who was infest, 1737, upon the precept in Sir John Gordon's disposition to Garty.

Mary Sutherland, Lady Kinminity, as executrix to her husband, pursued Sir John Gordon for the rents of part of the estate of Polrossy, which he possessed by tack; to which he pleaded, a preference in his own right, for that Garty having only a personal right to the heritable bond, when he transferred it to Robert Gordon, this must give a preference to him on those rents which fell due betwixt the date of that deed, and the time when Bucky's posterior disposition was compleated by infestment; although it was owned, that agreeably to what was found between Bell of Blackethouse and Gartshore, No 80. p. 2848. Bucky would have been preferable from the date of his infestment,

No 26.

No 27.

A second assignee to a personal right, which he first compleates by infestment, carries the profits accruing thereon, between the date of his assignation and infestment.

No 27.

Sir John also *pleaded* compensation on a bill of Kinminity's, bearing annual-rent from the date, to the term of payment.

THE LORD ORDINARY, 16th July 1745, " preferred the Lady Kinminity to the tack-duties, which fell under her husband's disposition, and repelled the ground of compensation."

*Pleaded* in a reclaiming bill; That the right being personal in Garty, the personal conveyance was effectual, and carried the profits, anterior to the time when the subsequent conveyance was made real by infestment.

*Answered*; That it is infestment which determines the property of lands, and the rents must follow the subject; and granting, if a question had occurred before infestment, the first right must have been preferred, this would have been owing to their being both considered as assignation to mails and duties, where the first diligence would be preferred.

THE LORDS adhered.

Act. *Ferguson.*

Alt. *Lockhart.*

Clerk, *Murray.*

*D. Falconer, No 221. p. 305.*

1749. December 14.

The INSURANCE COMPANY OF EDINBURGH *against* The ROYAL BANK.

No 28.

By the articles of an insurance Company, the area of a burnt house falls to the Company, if not built within three years after the proprietor receives the insured sum. This article was found not to effect onerous purchasers.

CERTAIN considerable proprietors of houses in Edinburgh, entered into a contract, for mutually insuring each other against losses by fire, by raising a fund for that purpose, by the contribution of certain sums, proportioned to the estimated value of the subjects insured, or by paying certain annuities for a determined number of years; the profits, if any arose, after making up what losses should happen, being to be divided amongst the Society, in manner agreed on by the articles; by the 12th of which it was provided, " That the area or ground right, with the ruins, if rebuilt within the space of three years, should be allowed by the Society to the proprietors *gratis*; and if not rebuilt within the space of three years from the adjustment, and payment of the damage, should belong to the Society, if there were no legal impediment hindering him to build within the said three years."

The contractors obtained a seal of cause from the Magistrates, incorporating them, and many other landlords acceded to the Society, which was done by subscribing their books, and paying the premium, or granting bond in due form, for paying the annuities in lieu thereof; which bonds were, by act of Parliament, declared to be real upon the house insured; and the method upon alienations, was for the purchasers to subscribe, and grant bond if any annuity remained due.

Sir James Dalrymple of Hales, and Mrs Margaret Cathcart, insured their several properties, in that tenement, at the back of the cross, called Carbieston's land, which was consumed by fire; and at the meeting of the Society, 7th De-