

executry. The Lords found, That there is sufficient evidence that the sum contained in the bill was part of the proceeds of Sir James Rothead's executry, and that therefore Sir James' nearest of kin are preferable for the sum in the said bill to the other creditors of Mr. Murray.

No. 12.

Fol. Dic. v. 4. p. 318. Rem. Dec.

* * This case is No. 15. p. 7737. *voce* JUS QUÆSITUM TERTIO.

1750. June 12.

RAMSAY *against* BLAIR.

No. 13.

Ramsay of Drumlochie being attainted for rebellion, in order to save something for his children, assigned to Blair, his brother-in-law, a bond due by the Earl Northesk. Blair granted discharge of this bond to the Earl, on the latter's granting him a new bond for the sum, and this new bond was assigned by Blair to Alexander Alison under backbond, declaring the assignation to be in trust for Ramsay's children. Alison recovering payment from the Earl, granted a bond of corroboration to Blair for behoof of the said children, of which bond Blair received payment from Alison. One of the children of Ramsay pursuing for her share of this money, the crown-officers receiving intelligence of the transaction, entered a claim for the whole sum in the bond. Blair urged in defence, That he could not be obliged to pay the same sum to both. The Lords decerned Blair to pay to the pursuer, notwithstanding of his being still liable to pay the whole sum to the crown.

Fol. Dic. v. 4. p. 319. D. Falconer. Sel. Dec.

* * This case is No. 62. p. 4969. *voce* FRAUD.

1752. February 14.

DUKE of NORFOLK *against* TRUSTEES of The YORK BUILDINGS COMPANY.

No. 14.

The York Buildings Company having purchased from the public several of the forfeited estates in Scotland, granted bonds of annuities, during the lives of certain persons mentioned in the bonds. The annuities having run in arrear, the Company entered into an indenture with the annuitants, binding themselves to obtain infestments on the estates, and then to grant infestments to certain persons as trustees for security of the annuitants, whose names were contained in a schedule annexed to the indenture. The Company was accordingly infest, and the Trustees in consequence; but neither the indenture, schedule, nor disposition to the Trustees, mentioned the original bonds, nor the lives, inserted in the bonds. Several of the annuitants disposed their annuities, and, from ignorance of the law of Scotland, the purchasers were in use to give up the old bonds to the Company, and obtain from them new bonds, in which sometimes the names of the lives were changed. The Duke of Norfolk, a creditor of the Company, adjudged the

No. 14. estates, and being infest, brought a reduction and improbation of the rights granted by the Company to the Trustees. In this process he insisted, that none of the new bonds could be entitled to the security of the Trustees' infestment, not being mentioned in the schedule; and that the destroying the old bonds was a cancelling of the security; besides, that in several of the new bonds the alteration of the lives made a total alteration of the annuity. The Court found, That the annuitants, whose names were not mentioned in the schedule annexed to the disposition to the Trustees, or who had delivered up the old bonds, and taken new bonds, posterior to the Trustee's infestment, had no real right upon the lands,

Fol. Dic. v. 4. p. 318. Sel. Dec. Fac. Coll.

* * * This case is No. 7. p. 7062. *voce* INNOVATION.

1765. *November*

ALEXANDER ALISON, Deputy Receiver of Excise, *against* Messrs. FAIRHOLMS and MALCOLM, Bankers in Edinburgh.

No. 15.

A factor for an executor having lodged his constituent's money with a banker, in his own name, found, that after the factor's death, the money was not *in bonis* of him, but belonged to his constituent.

Mr. Alison, as executor of William Ruthven, granted a factory to John M'Laggan for disposing of the executry-effects, paying the creditors, &c. M'Laggan, being clerk to Messrs Fairholms and Malcolm, lodged the proceeds of the executry with them at 4 *per cent.* entering the payments in the books, and taking the receipts in his own name. He had a salary of £.50, from Fairholms and Malcolm, for which he kept a separate account. He likewise owed them a sum by bond, bearing 5 *per cent.* interest.

M'Laggan died before fully settling with Mr. Alison, and, when there was £.287 9s. 6d. of the executry-money still in the hands of the defenders; and, they having claimed compensation or retention, on account of the debt due to them by M'Laggan, Mr. Alison brought a process, concluding to have it found, that the sum, being the proceeds of the executry-effects, belonged to him, and therefore could not be applied towards payment of M'Laggan's debt.

The fact, that this money was the proceeds of the executry was very satisfyingly evinced. M'Laggan had no money of his own. He was not factor for any other person. His account with Fairholms and Malcolm, both in dates and in the sums, to very trifling fractions, corresponded with his transactions as factor. There was besides found in his cabinet at his death an holograph note, wherein, after stating some articles of charge and discharge respecting the executry, he drew out a balance against himself of £.289 18s. 7d. adding, "whereof due by Fairholms and Malcolm £.287 9s. 6d."

Argued for the defenders: Though it were certain that this money was the proceeds of the executry, that would not be sufficient to infer the conclusion contended for by the pursuer. The law does not consider money as a *corpus*. It is the property of him into whose hands it hath lawfully come. If it be the value of another person's effects, that person may be creditor to the possessor of the money,