

cannot create a new right, or make a conditional right absolute. The trustee must take the property *tantum et tale* as it stood in the person of the bankrupt; and if the property was subject to redemption, or was fiduciary in the person of the bankrupt, it must remain so in the person of his trustee; Mackintosh against Heriot, June 14. 1745, No 218. p. 1166.

With regard to the objections to the regularity of the missive, it is not denied that the subscription is genuine, and, at all events, the pursuer is entitled to prove the verity of the subscription by the oath of the writer, so as to make the missive probative; Crawford against Wight, Jan. 16. 1739, *voce* WRIT; Neil against Andrew, June 8. 1748, *voce* PERSONAL and TRANSMISSIBLE; Edmonstone against Lang, June 23. 1786, *voce* WRIT. It was no objection to this mode of proof, that the granter of the missive is now bankrupt, Halkerston against Lindsay, February 26. 1783, *voce* PROOF. And although the letter is not formally addressed to the pursuer, there is extrinsic evidence that he was the person in whose favour it was granted.

THE LORDS, upon advising the petition, with answers, considered the burden as personal, and not good against the creditors. They therefore pronounced the following interlocutor: "THE LORDS having advised this petition, with answers, they alter the interlocutors complained of, and assoilzie the petitioner from the action of reduction, and decern; and remit to the Lord Ordinary to proceed accordingly."

Lord Ordinary, Woodhouselee.

Act. Monypenny.

Agent, James Smyth, W. S.

Alt. Greenshields.

Agent, R. Boyd, W. S.

Clerk, Menzies.

f.

Fac. Col. No 127. p. 281.

---

S E C T. VI.

Discharge of the Superior's Casualties.

1610. February 1. Sir GEORGE ERSKINE against LD CRAIGIEHALL.

No 81.

IN the action of declarator pursued by Sir George Erskine, donatar constituted by Barnbougall to Craigiehall's liferent of the Lowchald, the LORDS found that the vassal's liferent fell to his superior, if the vassal were year and day at the horn before he were entered, and unrelaxed when he entered; that infestment given by the vassal-rebel, albeit before he were year and day at the horn, to him that bought his land, would not prejudice the superior of his liferent, if

No 81.

he remained year and day at the horn, especially if the rebel retained possession. It was also found, That a gift granted by King James III. under his Great Seal, *in anno* 1474, to John Stewart of Craigiehall and his heirs, that whensoever his lands of Lowchald holden by him of Barnbougall, who held them ward of the King, or his lands of Craigiehall holden by him of Lord Seton, who held them ward of the King, should fall in the King's hands by the ward of his vassals, the same ward should pertain to the said John Stewart of Craigiehall and his heirs heritably; that that gift was now expired and null, and could only serve, at the most, during the lifetime of the King, giver thereof.

*Fol. Dic. v. 2. p. 68. Haddington, MS. No 1776.*

No 82.

A clause in a feu-right discharging the feu-duties in all time coming, found not effectual against a singular successor in the superiority.

1679. November 19. The Lady BLACKBARONY *against* BORROWMANS.

THE Lady Blackbarony being infeft in liferent, and her son John Murray in fee in the lands of Cringtie, pursues improbation and reduction against Borrowmans, of a feu-right of the said lands granted to them by umquhile Blackbarony, in which feu there is a clause, "discharging the feu-duties in all time coming," whereby the feu became null as wanting a *reddendo*, at least it ought to be declared, that the foresaid discharge could not be effectual against the pursuers, who are singular successors to Blackbarony, who disposed the superiority to Mr William Burnet, from whom it was apprised and adjudged, whereunto the pursuers have right and stand publicly infeft. The defenders *alleged* absolutor, because the discharge being contained in the body of the feu-right becomes a condition of the feu, which therefore becomes in effect blench; and though provisions in infeftments, to grant gifts of escheat *gratis*, be not effectual against singular successors, being but personal obligations, yet this discharge is no obligation, but a present passing from the feu-duty in time coming. It was *answered*, That if the discharge were effectual, it would necessarily annul the feu, which cannot subsist without a *reddendo*, nor can it be equivalent to a blench, which hath always a *reddendo, si petatur*.

THE LORDS found the discharge of the feu-duty contained in the feu, did not annul the same, but found that it was not effectual against singular successors, and that the pursuers had right to the feu-duty since they acquired right to the superiority notwithstanding thereof.

*Fol. Dic. v. 2. p. 68. Stair, v. 2. p. 707.*

No 83.

A discharge of 20s. Sterling payable yearly to a

1679. December 9. Lord HALTON *against* The TOWN of DUNDEE.

THE Lord Halton, treasurer-depute, being infeft in the estate of Dundee and Constabulary thereof, *cum feodis et emolumentis ejusdem*, pursues the Town of