

the assignee, and that there remains only the sum of 1100 merks, which he acknowledges to have received, and therefore discharged him of the whole. The pursuers *alleged*, the discharge, not bearing payment of the whole sum, but only of 1100 merks, nor yet bearing, that the instructions were given up to the assignee, cannot exoner the defender; but he must yet reproduce the account and instructions thereof; likeas he has produced a great part thereof in this process; because no discharge could be relevant to liberate this defender, but only payment made *bona fide*.

THE LORDS found the discharge sufficient to liberate the defender; mainly, because, albeit the discharge mentions not the instructions to be given up, yet the defenders were not obliged to preserve the same, or be at the hazard thereof. The pursuer further offered them to prove, that the defender had yet in his hand the account and whole instructions, and therefore ought to reproduce the same, that the Lords might consider, whether the rebel's assignees had allowed any thing to him, which ought not to be allowed, and did belong to the donatar; which the Lords sustained.

*Fol. Dic. v. 1. p. 114. Stair, v. 1. p. 70.*

1662. July 19.

MONTGOMERY of ——— *against* ———.

MR WILLIAM WALLACE having obtained a disposition of the lands of Haggburn from Thomas Hunter, he gave a back-bond, obliging him to sell the same at the best avail, and, as a part of the price, to pay a bond of provision to Thomas's sisters and brother, granted by their father, and having retained his own sums, and such as he was cautioner for, was obliged to count for the rest; and being first pursued before the *Englishes*, and now before the Lords, he was decerned to take the lands at sixteen years purchase and a half, and to count accordingly. It was *alleged*, He could not have allowance of the sums paid to the brother and sister, because these could not exclude lawful creditors. It was *answered* for Mr William, He had paid *bona fide* a part, and had given bond for the rest, and could not now be called in question. It was *answered*, he was *in mala fide*, because the payment was made after intenting of the reduction against his right, at the pursuer's author's instance. Mr William *answered, non relevat*, unless there had been a reason libelled in that reduction against these bonds. The pursuer *answered*, It was sufficient that reduction was used against the whole right, to which any reason might be added.

THE LORDS found this allegiance not relevant to put Mr William *in mala fide*, unless there had been a special reason of reduction filled up, and shown to Mr William against these bonds particularly.

*Fol. Dic. v. 1. p. 113. Stair, v. 1. p. 131.*

No 19.

No 20.

Payment *bona fide* of a particular bond, was sustained, though after intenting of reduction, as there was no special reason of reduction libelled.