

S E C T. II.

Alienation after Rebellion bars not the Completing Rights, where there is an antecedent obligation.

LORD FORBES *against* MARQUIS of HUNTLY.

No 47.

ALTHOUGH the act of Parliament annul all assignations made *stante rebellione*, yet if lands be disposed before rebellion, the rebel may make assignation of any warrandice competent to him, with consent of the buyer; because the same is accessory to the disposition of the land, which was sold before he was rebel.

Fol. Dic. v. 1. p. 555. MS. Decisions at the end of Pitmedden's copy of Colvil, p. 85.

No 48.

A bond granted after denunciation sustained, being granted in satisfaction and implement of a contract anterior to the rebellion.

1676. *January 28.* JACKSON *against* SIMPSON.

IN a competition betwixt Charles Jackson, as creditor to one Vanderstraiton, who had then arrested and obtained decret, and Alexander Simpson, as donatar to Vanderstraiton's escheat,

THE LORDS found, That the arrester's debt, albeit by his bond dated after the rebellion, yet being for implement of a contract anterior to the rebellion, did affect the escheat goods, and was preferable to the donatar, albeit this bond was not in corroboration, but a new bond, upon a discharge granted of the foresaid contract.

Fol. Dic. v. 1. p. 556. Stair, v. 2. p. 407.

* * * Gosford reports this case :

1676. *January 27.*—IN a multiplepinding raised at the instance of one Douglas against the Creditors of Vanderstraiton, compearance was made for Alexander Simpson; and for him it was *alleged*, That he ought to be preferred, because he was donatar to Vanderstraiton's escheat, and had intented declarator against James Douglas, who was Vanderstraiton's debtor, for payment thereof; and this debt belonging to the rebel, *ipso momento* that he was denounced at the horn, it belonged to the King and his donatar.—It was *answered* for Charles Jackson, That, notwithstanding, he ought to be preferred, because, being a lawful creditor to Vanderstraiton, by virtue of his bond, before any gift or diligence thereupon, he had arrested in Douglas's hands, and obtained a decret to make furthcoming, whereby he had been constituted Douglas's proper debtor;

and, as a rebel making voluntary payment of debt, the same can never be repeated by a donatar; who hath a posterior gift; so here he is in as strong a case, the debt being innovate, and Douglas made debtor *proprio nomine*, as hath been often decided, in case of voluntary payment; and, if it were otherwise, it would interrupt all commerce and trust, it being impossible for creditors to trust merchants or others, especially strangers, who are in exercise of their trade, seeing they may be denounced and registered at the horn in many remote places; and the creditors are not obliged to look all registers upon all occasions when they deal with trafficking merchants; and here the case was most favourable, because Jackson's bond, whereupon he arrested, is dated within ten days of the denunciation. *2do*, It was offered to be proved, that this bond was for that same debt which was due by a contract prior to the rebellion, whereupon decret was recovered against Vanderstraiton; as likewise, by a discharge of the date of this last bond, which came in place thereof, and which was given to save from present execution upon the decret.—It was *answered*, That notwithstanding Simpson ought to be preferred, because, as to the *first*, it being granted that Douglas was debtor to the rebel the time of the arrestment, which was after rebellion, it did properly belong to the King, there being yet no payment made; and the law giving right to all moveables that belong to the rebel the time of his rebellion, to the King or his donatar, all who contract with them thereafter ought to look to their security, and know their condition; the act of Parliament ordaining all hornings to be registered, which all creditors may have inspection of; and if it were otherwise decided, it would be against law and the King's prerogative royal.—It was *answered* to the *second*, That it being granted by the discharge, that the first contract was quite taken away, and the debt in question was only due by the second bond, which was after the rebellion, the donatar ought to be preferred upon the foresaid reason.—THE LORDS did long debate upon the first reason of preference, as being of general concernment, both to the King and lieges, and public trust and commerce; but finding that the second reason was most relevant, that the bond came in place of a proper contract before the rebellion, they did prefer Jackson the arrester, and did reserve to determine the first point of the debate should stand singly betwixt donatars and creditors, who had done diligence by arrestments, and got decret before the gift.

Gosford, MS. No 843. p. 533.

1697. February 12. BURNET against AUCHTERLONY and OGILVIE.

In the competition between Mr George Burnet and Auchterlony, and Ogilvie in Montrose, the Lady Halgreen, by her husband's order, had delivered some blank bonds to these defenders, wherein they had filled up their own names; and being pursued for the money at the instance of Mr George, as donatar to

No 49.

A party was creditor to a person before he was put to the