

to her; so that the first assignation, if any were, took never effect, and is null in law, and cannot be respected, as if thereby the pension were extinct;—THE LORDS found, that the bishop ought to be answered and obeyed, and that the daughter, the assignee, had no right, and repelled her allegiance; for the LORDS found, that the first assignation denuded the pensioner, that thereafter she could not make any other assignation to her daughter; neither found they the posterior assignation to be such a deed, as whereby the first was revoked, in prejudice of the Prelate *cui jus erat acquisitum* by the first deed; specially that alleged deed of the second assignation, whereby it was alleged to be revoked, being done by himself and his wife also, which could not be thought as a revocation in law, that he should be both the revoker, and the person from whom it was revoked, and being private deeds betwixt most conjunct persons, which they might use and destroy at their pleasure, and which was not allowable.

Act. *Per Advocatum Regis et Stuart.*

Alt. *Nicolson et Morwat.*

Clerk, *Hay.*

Fol. Dic. v. 1. p. 513. Durie, p. 696.

No 3.

1634. June 26.

LAIRD OF RENTON *against* LADY AITON.

A CLAUSE in a contract conceived in favours of a third party, albeit not of his knowledge, cannot be discharged by any of the parties contractors, without the consent of him in whose favours it is introduced, if the contract be registered; for in that case, it is as good as it had been delivered to the said third party, and had become his evident.

Fol. Dic. v. 1. p. 511. Spottiswood, (CONTRACTS.) p. 72.

* * * Durie reports this case :

1634. June 25.—IN a spuilzie of teinds founded upon a right made by John Stuart of Coldingham, and Francis Stuart L. Moriston, and Robert Douglas, to the pursuer of the same teinds; at the time of the making of which right, the pursuer gave a bond to the said persons, authors of his right, that he should never exact more for these teinds, now acclaimed from the Lady Aiton, but only L. 100 yearly; which bond is registered in the books of Council, and made public; and upon which bond, the Lady Aiton defender, propones this exception, that she could not be found to have committed spuilzie; which exception the LORDS found relevant, and sustained it to elide the spuilzie; notwithstanding that the pursuer *replied*, That this bond containing the foresaid clause, could not defend her, the said clause being conceived in favours of a third party, who was neither present the time of the parties contracting thereon, she not being a party, nor knowing any thing of the bargain, and doing nothing upon it, nor being accepted by her, nor by none in her name, and so behaved to be unprofitable to her, being *stipulatio alteri facta*, which is not

No 4.

No 4.

profitable in law ; likeas thereafter all the parties authors of the said disposition, and receivers of the bond, containing the said clause, had discharged the same, and all the whole heads thereof, to the pursuer, except the L. Moriston, whereby the same became extinct, as if it had never been made, seeing she was not contractor ; which reply was repelled ; for the LORDS found, that seeing the said bond was registrated, and so made public, the same could not thereafter validly be discharged without the consent, and express deed of that person in whose favours the clause was conceived ; likeas the whole persons to whom the same was made, and who disponed the teinds to the pursuer had not at all discharged the same ; for if it might have been validly discharged without consent of the third person, (as it was not found) yet all their consents behoved to have been given thereto ; and seeing Moriston's consent was not adhibited, who survived long after the discharge, and which is now impossible to be had, he being now deceased, therefore the discharge was not respected, to derogate to the said third person.

Act. *Stuart & Nicolson.*Alt. *Advocatus & Belchis.*Clerk, *Gibson.**Durie, p. 720.*

1676. June 8.

IRVING against FORBES.

No 5.

Found in conformity with
Wood against
Moncur, No
1. P. 7719.

— IRVING pursues the Laird of Tolquhon for payment of a bond granted by Tolquhon, his godsire, as principal, William Forbes, his father, who was then young Laird of Tolquhon, and another Forbes, as cautioners ; he insisted first against the cautioner, who is alive, who *alleged* absolvitor, because the pursuer had granted a bond in favours of Irving of Fedderet, wherein he had declared this cautioner free of this bond. It was *answered, imo*, That the defender had no right by that clause, unless the bond had been delivered to him, or at least accepted by Fedderet ; and it was offered to be proved by Fedderet's oath, and the witnesses insert, that this bond was never accepted by Fedderet, nor delivered to him, nor to any by his warrant. The pursuer *replied*, That this clause being in his favours, though a third party, it could only be taken away by his oath, for no man is obliged to prove the delivery or acceptance of a writ, if it be out of the subscriber's hand, unless the contrary be proved by his oath in whose favours the writ is.

THE LORDS found that this clause, though in a writ betwixt two other parties, was valid in favours of this third party, and that the not delivery or acceptance thereof, was only probable by his oath.

The pursuer did next insist against Tolquhon as representing his father, the other cautioner, who *alleged* that this bond bore not to be subscribed by his father, whose name was William Forbes ; but this being only an extract of the