against the ground, such as upon annualrents; and therefore this being a personal action, might be excluded or qualified by a personal exception upon the back-bond; and therefore they adjudged with the burden of the back-bond. No 34.

Fol. Dic. v. 2. p. 65. Stair, v. 1. p. 232.

*** Newbyth reports this case:

1664. *November* 25.—UMQUHILE Grange Hamilton did dispone the lands of Grange to the umquhile Lord Forrester, who thereupon was infeft; and, at the same time, did grant a back-bond relative to the foresaid disposition, wherein he declares, that the foresaid right was granted to him upon trust, and that the same was for the use and behoof of the Laird of Grange's spouse, and their heirs, he always being satisfied and secured for sicklike sums as he hath already undertaken, or should undertake, for Grange, his weal and standing of his estate, and therefore obliges himself, that he being paid and relieved in manner foresaid, to denude himself, and dispone the lands in favours of the Laird of Grange, his heirs and assignees. David German, and others of the Laird of Grange's Creditors, upon several debts due to them, comprise the lands of Grange from John Hamilton, now of Grange, as lawfully charged to enter heir to his father in the said estate, and have expressly apprised the back-bond *in anno* 1653; Alexander Livingston, a creditor of the Lord Forrester, pursues an adjudication of the lands of Grange.—THE LORDS sustained the adjudication with the burden of the back-bond, notwithstanding it was *alleged* for David German, and remanent of Grange's Creditors, That any infeftment the Lord Forrester had was only upon trust, and to Grange's behoof, declared in the back-bond, so that the lands of Grange cannot be liable to Forrester's debt, nor be adjudged by the pursuer, especially seeing, David German, and the rest of Grange's Creditors, had comprised the estate for considerable sums of money, and particularly the back-bond, many years before the intenting of this pursuit against the executor of the Lord Forrester; and that there is a pursuit depending against them, at their instance, for implementing and denuding, conform to the back-bond; for the LORDS founds that it was not *hujus loci* to debate any thing that might hinder the adjudication upon the back-bond, which was only a personal obligement.

Newbyth, MS. p. 7.

1666. *January* 31. HUGH DALLAS *against* FRASER of Inveralachie.

SIR MUNGO MURRAY having, by the Earl of Crawfurd's means, obtained from the King a gift of the ward and marriage, of Fraser of Streichen his nephew, he did assign the gift to Mr James Kennedy, and he to Hugh Dallas, before it past the seals; and, at the time that the gift was past in Exchequer, the same

No 35.
A back-bond granted at passing a gift of ward.

No 35.
and marriage, and registered in the books of Exchequer, found to affect the gift in the person of a singular successor.

was stopt until Sir Mungo gave a back-bond, bearing, that he had promised, at the obtaining of the gift, to be ruled therein at the Earl of Crawfurd's discretion, who, by a declaration under his hand, declared that the gift was purchased from the King for the minor's behoof, and that only a gratuity for Sir Mungo's pains was to be paid to him; and that the Earl declared, he allowed Sir Mungo 5000 merks. There was a second gift taken, in the name of Sir William Purves, of the same ward and marriage. Hugh Dallas pursuing declarator of the double avail of the marriage, because there was a suitable match offered, and refused; compearance was made for Sir William Purves, and the Lord Fraser his assignee, who declared that their gift was to Streichen's behoof, and *alleged*, That the first gift could only be declared as to 5000 merks contained in the Earl of Crawford's declaration, because of Sir Mungo's back-bond the time of passing of the gift. It was *answered*, 1*st*, That Sir Mungo's back-bond, and the Earl of Crawfurd's declaration, could not prejudge the pursuer, who was a singular successor to Sir Mungo, especially seeing it is offered to be proven, that the gift was assigned, and intimated before the back-bond; after which, no writ subscribed by the cedent could prejudge the assignee. It was *answered*, That the said assignation being of the gift, when it was an incomplete right, and only a mandate granted by the King, could not prejudge the back-bond granted at the time the gift past the Exchequer and seals, for then only it became a complete right; and, notwithstanding of the assignation, behoved to pass in the donatar's cedent's name; so that his back-bond, then granted and registrated in the Exchequer, behoved to affect and restrict the gift, otherways all back-bonds granted to the treasurer and Exchequer might be evacuated by anterior assignations. It was *answered*, That this back-bond was granted to the Earl of Crawford, then but a private person, and hath not the same effect as a bond granted to the treasurer.

THE LORDS found this back-bond granted at the passing of the gift, and registrated in the books of Exchequer, to affect the said gift, and therefore restricted the declarator thereto.

In this process, it was also *alleged*, That the first gift was null, bearing the gift of the ward and marriage to be given upon the minority of Streichen, and the decease of his father; and the second gift bore, to be upon the minority of Streichen, and the decease of his goodsire, who died last infeft, his father never being infeft. It was *answered*, That the designation was not to be respected, seeing the thing itself was constant, and that the father's decease, albeit not infeft, was the immediate cause of the vacation; seeing the oye could have no interest, until the father, though not infeft, were dead.

THE LORDS forbore to decide in this, seeing both parties agreed, that the 5000 merks should be effectual, so that it was needless to decide in this, which, if found relevant, would have taken away the first gift wholly.

Fol. Dic. v. 2. *p.* 65. *Stair, v.* 1. *p.* 345.

*** Newbyth reports this case:

No 35.

IN a competition betwixt two gifts of the ward and marriage of Simon Fraser of Inverlachie, Sir Mungo Murray being the first donatar, and having granted a back-bond to the Earl of Crawfurd, obliging himself to be regulated by his Lordship in making use of the said gift, who notwithstanding thereof, did assign the said gift to Mr James Kennedy, without the burden of the said back-bond, and Mr James transferred it to Harry Dallas; who pursuing the tenants for mails and duties; compearance is made for Sir William Purves, as second donatar; who declared, that his gift was for the behoof of the minor, and that Sir Mungo Murray, the first donatar, could not validly assign the gift without the burden of the back-bond, the same being a trust.——THE LORDS found, that the back-bond granted by Sir Mungo Murray to the Earl of Crawfurd being registrated before the gift passed the seals, did so affect the gift, that it could not be assigned nor transferred, but with the burden of the back-bond, and therefore preferred the second donatar, in regard of the conception of the first gift and back-bond, but with the burden of 5000 merks, which the Earl of Crawfurd decerned the said Sir Mungo to have from the minor.

Newbyth, MS. p. 54.

1666. *July* 31. EARL of SOUTHESK *against* MARQUIS of HUNTLY.

No 36.
A back-bond of an appriser, before he was infeft, renouncing all benefit of his apprising, and discharging the same, in so far as prejudicial to a third party's right, was found effectual against a singular successor, though never registered.

EARL of SOUTHESK's cause, mentioned 23d July, No 40. p. 4712. *voce* FORFEITURE, was this day advised, as to another defence, viz. that my Lord Argyle had right to Beaton's apprising of the estate of Huntly, which was long anterior to the pursuer's infeftment, and whereunto Huntly hath right, as donatar to Argyle's forfeiture. This contract of the cumulative wadset being granted *in anno* 1656, it was *answered*, That Beaton, before he was infeft upon that apprising, had renounced all benefit of the apprising, and discharged the same, in so far as it might be prejudicial to the pursuer's right, which is presently instructed. It was *answered*, That renunciation was but personal, and was never registrated, and so could not be effectual against any singular successor; much less against the King's donatar, having a real right. It was *answered*, That apprisings are not of the nature of other real rights, but they may be taken away by intromission, payment, or discharge of the appriser, and there needs no resignation nor infeftment. It was *answered*, That albeit, by the act of Parliament 1621, apprisings may be taken away by intromission, and that it hath been extended to payment, yet never to such personal back-bonds.

THE LORDS found the apprising to be taken away by Beaton's back-bond renouncing the same, in so far as concerns this pursuer, and found the same relevant against the donatar. See REGISTRATION.

Fol. Dic. v. 2. p. 64. Stair, v. 1. p. 402.