

\* \* \* Newbyth reports this case :

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 Crawford, 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 Crawford 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 Crawford decerned the said Sir Mungo to have from the minor.

*Newbyth, MS. p. 54.*

No 35.

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

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.*

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 registrated.