

it was replied for the Countess, that her infestment *in anno* 1659 was remuneratory; and was qualified, that it was accepted only by her as having consented to the infestments of several creditors, whereof Birsbin was now one; and notwithstanding thereof, she might make use of her infestments 1650 and 1651, which were prior to Birsbin's, and were public by her husband's possession; for that qualification being only in the narrative, and the dispositive clause being general as to all provisions whatsoever preceding, which the Countess renounced without any qualification; the Lords would not sustain the reply, albeit by the last infestment she was a great loser.

*Gosford MS. p. 49.*

No. 5.

1672. January 24 BOYLSTOUN *against* ROBERTSON and FLEMING.

Boylstoun, merchant in London, having employed one Makelwood in Halifax, to buy linen cloth to him, and given her money for that effect; she employed — Palmer, who accordingly went to Glasgow and bought a pack of linen cloth, and left it in the hands of Nicol Robertson; which being arrested there, at the instance of some merchants in Glasgow for a debt of Makelwood's, they obtained a decret for making the same forthcoming; whereof Boylstoun having raised suspension and reduction, alleged that this linen cloth could not be made forthcoming for Makelwood's debt, because it was bought for the use of Boylstoun's husband, and with his money, so that it could not belong to Makelwood, who was but a servant, or a person entrusted for the behoof of another.

In this process the Lords ordained the oaths of the parties who sold the linen cloth at Glasgow, and witnesses to the bargain, and Robertson in whose hands it was left, and also the oaths of the said Mackelwood and Palmer to be taken, in whose name and for whose use the linen cloth was bought and delivered; of which there were two witnesses taken at Glasgow, who deponed that Palmer bought the cloth, and that in the bonds given for the price thereof, he designed himself servant to Makelwood, and that he bought and received the cloth in the name and for the use of Makelwood. Makelwood deponed that she was employed by Boylstoun to buy the cloth, and sent his money for that effect with Palmer, who deponed that he bought the cloth for the use of Boylstoun.

The Lords found, that by the testimonies of the witnesses, it being proved that the cloth was bought and received by Palmer, servitor to Makelwood, in her name and for her use, that the property of the cloth was thereby stated in the person of Makelwood, and not in the person of Boylstoun, albeit she had a mandate or trust from him, which is but a personal obligation; but property or dominion is only constituted by possession, and Boylstoun had got no possession of the linen cloth, either by himself or by any in his name to his use.

*Stair, v. 2. p. 52.*

No. 6.

A person receiving money to buy goods for another, having bought and received them in his own name, without mention of the truster, the property was found to be in him, and his creditors arresting were preferred.