

Lumsden's debts contracted during the time he was married to the said Robert Chapman's mother; *sed ita est* this was none of them. One question arose, Whether the principal discharge needed to be produced, seeing it was fully narrated in the Sheriff's decreet, and the tenor of it was not controverted by the parties, but only the meaning and interpretation of it. Therefore, the Lords found the obligation of the 400 merks was separate and distinct; and found the letters orderly proceeded: reserving his reduction, when the production should be satisfied, by the principal discharge being produced in the process.

*Vol. I. Page 622.*

1694. June 29. WALTER SCOT of TUSSILAW against JOHN GRIEVE of PINNACLE.

IN the declarator of trust, pursued by Walter Scot of Tussilaw, against John Grieve of Pinnacle, a quaker, that the disposition he gave him of his lands was in trust, and only for his own behoof; the qualifications of the trust were partly founded on some missive letters of Grieve's, and on the smallness of the price; and that the narrative of the disposition does not bear an obligation to pay it, either to Tussilaw or his creditors, but only, that the land shall stand affectable for the creditors' diligence, in so far as may extend to 25,000 merks, &c. Pinnacle opposed the disposition, as simple and absolute, and bearing an onerous cause,—*viz.* the 25,000 merks, the undertaking of 1700 merks of yearly annuity to Tussilaw's grandmother, and the disposing the roun of Easter Pinnacle to Tussilaw, being worth 300 merks yearly; and denied any trust, farther than what ease he should drive Tussilaw's creditors to give him down; that it was to accresce to Tussilaw himself: and that this was all that his letters imported.

The case was intricate; and some were for allowing either party a mutual probation, before answer, as to the grounds inferring trust, or eliding it; but the plurality thought this was to involve them in a labyrinth of trouble and expenses; therefore, they found the trust proven, in regard the disposition could not import a sale, there being no price. And, in law, *emptio et venditio subsistere non potest sine pretio*: and, therefore, reponed Tussilaw to his own right. (But I think this will not extend to rescind a posterior sale of a part of thir lands, made by Pinnacle, with consent of Tussilaw, to Michael Anderson; but only that Pinnacle shall count for the price received, and how far he has expended it in payment to Tussilaw's creditors.) And ordained them to count and reckon; and declared, that Pinnacle should have deduction and allowance of all payments, expenses, and disbursements, on Tussilaw's affairs, together with a consideration for his pains.

*Vol. I. Page 624.*

1694. June 29. The CREDITORS of SIR ADAM BLAIR of CARBERRY against ROBERT DICKSON of SORNBEG.

AN objection was reported against the roup of Sir Adam Blair of Carberry's estate, in favours of Robert Dickson of Sornbeg, as he who offered most for it.