

1704. *February 24.* DAME JEAN LESLIE, Lady Blairhall, *against* Mr DAVID RAMSAY, Writer.

BRUCE of Blairhall being at the horn, Mr David Ramsay gets the gift of his escheat on a horning for a debt which Blairhall owed to Mr Robert Blackwood, and gives a back-bond to the Exchequer, That out of the escheat he shall, *primo loco*, pay 1600 merks of aliment constituted to the Lady Blairhall, formerly Lady Innernytie, to which jointure Blairhall, *jure mariti*, had right; and on this she pursues Mr Ramsay, either to pay or assign.

ALLEGED,—Back-bonds to the Exchequer did not make donatars personally liable; for if he do not intromit with the subject he cannot be obliged to pay; and he is already denuded, and so cannot assign her, because Mr Blackwood, by the Act of Parliament, being preferable, the gift being on his horning, he hath assigned the benefit of the gift to the said Mr Robert, with the burden of this back-bond, and particularly of her aliment.

ANSWERED,—She did not insist to make him personally liable, but only in alternative terms, either to assign her, not to the whole, but to so much of the subject as will pay her aliment, or then to pay it himself; so that he has the election. And if he has put it out of his power to assign, by denuding in favour of Blackwood, then *sibi imputet*,—he must fulfil the other member of the alternative, and pay; for, by the tenor of your back-bond, you became my trustee, and could do nothing to deteriorate my condition: nor can you turn me over on Mr Blackwood, but you may seek your relief from him; for what hinders but he may transfer the benefit of the gift to another, and so on, that I shall not know whom to pursue, and so be frustrated of payment.

Some thought he might assign her to the escheat, notwithstanding of his prior assignation to Mr Blackwood, seeing it was burdened expressly with her annuity. However, the Lords, by plurality, found Mr Ramsay bound, either to assign or pay.

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1704. *February 29.* The DUKE of QUEENSBERRY and the MARQUIS of ANNANDALE *against* DAVID BAILLIE.

DAVID Baillie, son to Mannerhall, being convened before the Privy Council, for alleged defaming and leasing-making on the Duke of Queensberry and Marquis of Annandale, in a letter he wrote to the Duke of Hamilton, on the 22d of December last, wherein he affirmed the said Duke and Marquis had dealt with him to accuse the Duke of Hamilton and others of corresponding with St Germain, and proffered him considerable advancements if he would: And in regard the said David could give no evidences of his slanderous information; therefore the Council, on the 24th of February last, declared him infamous, appointed him to stand on the pillory, and banished him to the West India plantations. David conceiving himself injured,—for if he had concealed it, then he might have been overtaken for misprision and not revealing, and now having discovered it, he is condemned as a defamer and calumniator, which makes his case hard,—he re-