

the price, at least conform to their arrestments and other diligences affecting the same.

Upon this interlocutor, compeared William Martin of Harwood, ALLEGING,—He was creditor to Mr William Archibald in 2000 merks he had paid as cautioner for him to William Miller, the Quaker, gardener in the Abbey; and, for his relief, he had caused insert his debt in Brown the purchaser's bond for the price, and relied so fully thereon, that he had used no manner of diligence for securing himself. And though that obligation and list, specially applying the price, was reduced, yet he was in a quite different case from the rest of the creditors therein mentioned; and it behoved to stand good as to him, because the right of the lands was wholly conveyed to him; and though it was in trust for Archibald's behoof, and he denuded of it, yet it can never be supposed that he would do it otherwise but with the tacit burden and reservation of his own relief as to his cautionary to Miller. And he being under no back-bond, his denuding of the trust must imply his being relieved of all debts he stood bound in, for the person intruster from whom he had the trust.

ANSWERED for Nasmith and the other creditors,—That if he had expressly burdened his disposition to Archibald with the debt he stood cautioner for him to Miller, he might have had a more favourable plea: but this he does not; his disposition proceeds upon a plain narrative of mere trust, and is simple, pure, and absolute, without the least reservation for his own relief; and is more than a year before Archibald sells the lands to Brown. And if he relied on Brown the purchaser's obligation to pay him, when Mr Archibald was out of a legal capacity to prefer one creditor to another, *sibi imputet* that he did not expressly burden his disposition when he denuded: His being once trustee gives him no manner of preference, unless he had restricted, qualified, and burdened his denuding therewith; and, having made no such stipulation and reserve, he cannot plead any preference on the price, more than any other of Archibald's creditors; and however he might have refused to denude but with the burden of his relief, yet having done it simply, without that reservation, he has none to blame but himself, who did not advert better to his own security, however some remote kind of equity may seem to favour him.

The Lords thought, if the obligation to pay the debts contained in the list given by the purchaser, had been of the same date with Harwood's disposition as trustee, it might have been looked on as *pars contractus*; but finding he had simply denuded of the trust more than a year before the sale, without providing for himself, they refused his bill, and found he had no preference beyond the rest of the creditors.

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1709. November 29. SEMPLE of BELTREES against JAMES STEILL.

SEMPLE of Beltrees elder, being resting some small debts up and down the country, and trusting one James Steill, a notary and writer in Beith, to purchase in his debts; he, taking advantage of his simplicity, buys in about twenty debts, and causes Beltrees renew the bonds. And because he was under a registrate interdiction, he, to shun it, makes them of a date some years prior, and then adjudges for the whole, and charges the superiors to infest him, and pursues for

maills and duties. Beltrees, younger, finding his father overreached, he raises a reduction and improbation of the whole bonds which were the grounds of the adjudication; and Steill having produced them all but three, there is a certification extracted against these three, as false, for not production. And, as to the seventeen produced, Beltrees craved he might abide by the verity thereof, *sub periculo falsi*. And he compearing, refused to abide by fifteen of them, but only subscribed his abiding by two; whereupon young Beltrees extracted his decret of improbation as to these fifteen simply passed from, which extended to upwards of 25,000 merks: And, as to the remaining, he repeated his articles of falsehood, but so as they likewise dipped on the forgery of these fifteen passed from; in regard the darkness of the contrivance, and the length of time, had made the probation and discovery more difficult; yet vestiges enough still remained of the forgery, such as, he was under no necessity to purchase them, and knew old Beltrees was interdicted, and yet he would meddle. Next, they (though for considerable sums,) are all wrote on half sheets, and such as want the mark of the paper; by which, in the Earl of Haddington's time, when President of the Session, a forgery of a bond was discovered; and some of them being granted to his own tenants, were afterwards paid and allowed in their rents. And, as some sort of men had need of a good memory, so Mr Steill has been here caught in his own snare; for some of the bonds acknowledge receipt of the money from persons that were not then four years old, and others of them are dated on Sunday; and generally they bear dead witnesses, whereof one of them on his death-bed declared he was never adhibited a witness to any of Beltrees's bonds, above eight years ago, and yet they bore a much older date: besides they were all of one style, which evinced that one spirit actuated and informed the whole machine, and proved the contrivance came from one and the same hand: and though a late example was made on Hunter and Strachan, yet it was forgot, and persons were beginning that trade again.

The Lords thought his passing from the fifteen bonds did not free him from the *pœna falsi*, seeing he had made use of them in the manner above mentioned; and though he denied any accession, and alleged all he acted was with old Beltrees's consent, yet the Lords discharged the clerks to give up these bonds passed from, but ordered them to lie till the event, for giving farther light; and issued out a warrant to sheriffs, magistrates, and all other judges, to apprehend him, till he were tried, either before themselves or the criminal court.

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1709. December 1. MATTHEW ANDERSON *against* JOHN PATON.

THE deceased William Paton, merchant in Edinburgh, disposes his estate and effects to his father, burdening him with sundry legacies to his brethren and sisters, and particularly 7000 merks to his sister Elisabeth; and she being married to Ninian Anderson, who received 4500 merks, he pursues John Paton for the remaining 2500 merks, as he who represents his father, the trustee, by the fore-said disposition.

ALLEGED,—There was no obligation on the father to pay, but only to divide it amongst his bairns; and denies the money was uplifted, but still in the debt-