

could not fall under an arrestment laid on in March before,—it not being then begun, much less current.

ANSWERED,—The letters bore warrant to loose all arrestments laid, or to be laid, on Mr George Forbes's goods or debts ; which was warrant enough for the commissary's decerniture.

The Lords sustained the nullity, and turned the decret to a libel.

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1703. February 3. ANNA FORBES against THOMAS LESLIE of COLPNAYSHIELS.

THOMAS Leslie of Colpnayshiels designing to marry Anna Forbes, daughter to the Laird of Leslie ; and falling into some melancholy damps, and apprehending himself impotent and unfit for marriage, he deserted the bargain : whereon her friends resenting the affront, they craved reparation ; and he, for satisfying them, did grant her a bond for 4000 merks : whereupon she having charged him, he suspended, on the complex reasons of concussion, circumvention, and melancholy ; in so far as he being subject to that melancholic distemper, advantage was taken of it, and he threatened by her two brothers-in-law, Pittachy and Kinnaldy, to crop his ears, and shoot him, if he did not repair her honour ; and being struck at that crisis, he gave the bond to redeem himself from that panic terror, where chimeras appear to such a weak person as terrible realities ; and so the bond being without any onerous cause, and impetrated by concussion, fear, and threats, and in a very unwarrantable, unaccountable manner, it ought to be annulled.

ANSWERED,—Clear liquid bonds are not to be taken away by such imaginary stories ; and, unless he confidently say he was *non compos mentis* at the granting, he cannot be heard : neither does he pretend that the violence or threats were used by the lady ; and they are not such a *metus* as *cadere potest in constantem virum* ; and it being signed at Count Leslie's house, it cannot be presumed that any hardship could have been offered to him there, but he might easily have got it prevented or redressed ; but truly it was a most free and voluntary act ; and he both injures himself and the gentlewoman now to quarrel it by an ignominious fiction of his own insufficiency.

REPLIED,—That the resisting those degrees of fear which a solid firm man will reject, is not to be required in one who is known to be habitually weak, and susceptible of the least impressions ; melancholy heightening all objects, and making a thing of no fear become very formidable, and having no strength to resist his lesed imagination ; under which discomposure he then laboured, and which was much inflamed by their menacing insinuations if he did not give the bond ; and which must be understood to contain this tacit condition, in case marriage followed, without which it must be reputed to be elicited *per dolum et metum*, and to be *ex turpi causa*, or *sine causa, contra bonos mores et libertatem matrimonii, et causa data causa non secuta* ; so that this circumstantiate case has an accumulate concatenation of reasons for repudiating this bond.

The vote was stated,—Try, before answer, the granter of the bond his condition at that time, and what threats were used ; or, Repel the defences in respect of the clear liquid bond ? and it carried, by a scrimp plurality, to repel the rea-

sons of reduction, and to sustain the bond. As to that allegiance, That any methods used to impetrate the bond were not by the lady herself, and so cannot meet her, Grotius,—*de Jure Belli et Pacis*, lib. 2. cap. 11. et lib. 3. cap. 19, —thinks the bond should subsist, because *tu a paciscente coactus non es*; but this does not hinder but in equity you have an action of damages against the extorters of the deed.  
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1703. February 9. JAMES MAXWELL against JOHN RAMSAY of GALRY.

JOHN Ramsay of Galry having bought a piece land from Semple of Fulwood, he pays the price, except 1000 merks, for which he gives bond, expressly bearing, in the narrative, that it was for the remainder of the price. This bond Fulwood assigns to James Maxwell, merchant in Glasgow, who charging Galry on it, he suspends, that, being the price of lands, it must stand affected and subject to purge and clear the incumbrances; *et ita est*, he condescends on an apprising thereof belonging to Fodderance, yet unsatisfied.

ANSWERED,—An assignee for an onerous cause to a simple and absolute bond, clogged with no such quality as to be liable to purge incumbrances affecting the subject disposed, cannot be stopt from payment on any such pretences; for it has a fixed term of payment, which could not have been, if the exacting it depended on the uncertain event of emergent incumbrances; and, if it had been the meaning of parties, that it might be retained on that account, there would have been an express clause inserted in the bond to that purpose.

REPLIED,—If the bond had bore borrowed money, the assignee would have had a good defence, that his money could not be stopt, by offering to prove it was a part of the price of lands; but, when it expressly *et nominatim* bears that to be its cause *in gremio*, it can admit no rational construction save that it was so qualified of purpose to subject it as the mutual reciprocal cause to clear the purchase of all incumbrances.

There were decisions adduced for either side; as the case of *the Lord Balanden* and *Arniston* in November 1688, and of *Sir Patrick Hepburn*, *Sir John Hall*, and *James Brown*, since the Revolution,—that a bond payable at a precise term, and bearing annualrent from the date, containing no obligation to purge, cannot stop any assignee for an onerous cause. On the other hand, *Stair*, book 1. tit. 10. thinks a bond, acknowledging it is for the price of lands, makes a *nexus realis* even against an assignee, and cites the 28th November 1676, *Carmichael* against *Dempster of Pitliver*.

Though many of the Lords inclined to be of this last opinion, yet, before fining of a rule, they resolved to hear it in their own presence.

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1703. February 11. KER of MORISTON against PRINGLE, ORMISTON, &c. CREDITORS of HOME of ECCLES.

In a competition between Ker of Moriston, and Pringle, Charles Ormiston, and other Creditors to Home of Eccles, Moriston objected against Pringle's ad-