

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-