

1724. November 26.

JOHN INGLIS of Burns *against* Mr JOHN OGILVE Son to the deceased DAVID EARL of AIRLY.

JOHN INGLIS, as representing his grandfather, pursued Mr John Ogilvie, as representing James Earl of Airly, for repetition of a composition paid by the pursuer's grandfather to the said Earl, for the forfeiture of Captain John Haddo.

The defence *pleaded* for Mr Ogilvie was, That the act of Parliament 1690 only afforded action of repetition to the forfeiting persons who had paid the composition, and to their heirs.

It was *answered* for the pursuer, That his grandfather paid the composition as trustee for the forfeited person, and that Principal Haddo, the Captain's son and heir, was called, and concurred with the pursuer: That the action of repetition was competent to the trustee, who paid the composition, appeared from the words of the statute, ' And their Majesties, with consent foresaid, declare, ' That the said donatars and others, and their foresaids, are and shall be liable ' to refund the said sums so paid, and give back the said bonds and securities ' to the parties concerned : ' That the statute was to be interpreted in the most extensive sense in favours of the forfeiting persons and their heirs ; and consequently the trustees should have direct action against the donatar, and not be obliged to trouble the heir of the forfeiting person with a process, and then put him to an action against the person who received the composition ; which would be an idle circuit, and multiply processes unnecessarily.

It was *replied* for the defenders, That the trustees for forfeiting persons were sufficiently provided for, by the clause in the act, ' allowing them to retain the ' rights acquired by them for the security of the sums they had paid out ; ' and therefore the clause observed for the pursuer could relate only to the forfeited person and his heirs.

' THE LORDS found, that upon the supposition that the pursuer's grandfather was trustee for the forfeiting person, the pursuer had action of repetition against the donatar and his heirs ; and remitted the consideration of the qualifications of trust to the ordinary.'

*Act. Ja. Boswell et H. Dalrymple, jun. Alt. Jo. Fleming et Jo. Ogilvie. Clerk, Justice.*

*Fol. Dic. v. 3. p. 235. Edgar, p. 119.*

No 69.

A person who had paid a composition for a forfeiture as trustee for the forfeiting person, was found entitled to repetition against the donatar and his heirs, on the act 1690.