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term to the husband and wife in liferent, and the son in fee. The father was found to have right to uplift the sum, in respect of a clause in the bond, bearing, that, notwithstanding the infeftment, the debtor should be obliged to pay the sums to the husband and his wife in manner foresaid, which was understood to refer to the destination in the personal obligation.

standing of the infeftment without requisition, to the said L. of Clackmanan, his said spouse, and their said son, in manner foresaid. In this cause it being controverted, if the L. of Clackmanan might charge for the principal sum, seeing he remained naked liferenter thereof, and the fee was established in his son's person by the infeftment taken thereof in that manner, after the term destined in the bond, for payment of the principal sum, whereby it was *contended*, that the liferenter could not uplift the sum in prejudice of the fiar, but only have his liferent of the annualrent of the same, specially the fiar being deceast, whose heir would have the undoubted right to the said principal sum after the liferenter's decease;——The Lords found, that notwithstanding of the infeftment of fee standing in the person of the son, that the father might charge for the principal sum, and uplift, and dispone upon the same at his pleasure, in respect of the clause and provision foresaid, conceived in the obligation, which bore, that the debtor, notwithstanding of the infeftment, should remain obliged to pay the sum to the L. of Clackmanan, his said spouse, and their said son, in manner foresaid. Which words, viz. 'in manner foresaid' the Lords found, ought to be ruled by the preceding clause of the bond, bearing the debtor, as said is, to be obliged to pay the same to him and his spouse at the term of Whitsunday 1625, and in case of their deceases to their son. By the which clause the Lords found, that power remained with the father, in his own time, to uplift the sum, and use the same at his pleasure, so long as he lived; and that the fee only was acquired and conferred to be in the son's person in case of the father's decease, who being on life, might charge for the principal sum, and employ the same at his pleasure. And this was found, because he had charged for the principal sum, upon the which charge the suspender had provided the money, and consigned the same, albeit Clackmanan *alleged* that he was only a naked liferenter, and that the fee remained with his son, and his heirs, so that he had no right to charge for the principal sum; and if he had used any charges for the same, he past therefrom, and declared, that he charged only at this time for the bygone annualrent thereof; which allegeance was repelled by the Lords, for they found, that Tulliallan, upon that charge, had reason to obey, and might lawfully have paid the sum to the charger, or consigned the same; and that the father's declaration foresaid should not prejudge him who had consigned the money.

Act. *Primrose*. Alt. ——. Clerk, *Hay*.

Fol. Dic. v. 1. *p.* 301. *Durie*, *p.* 231.

1629. *February* 20. L. Drumkilbo *against* Lo. Stormonth.

No 47.
A bond for the price of lands was granted to

A father, fiar of some lands, selling the saids lands, and the price in the contract of alienation being obliged to be paid to the father at the term therein mentioned, and, in case of his decease, to his son named in the contract; and,

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the seller, and in case of his death to his son *nominatim*, with an obligation, in case of failzie, to infeft the father in an annualrent therefor, and the son in the fee. The father was found to have right to discharge the bond without consent of his son, there being no infeftment expede vesting the fee in the person of the son.

in case of failzie, the debtor being obliged to infeft the father in an annualrent therefore during his lifetime, and his son in fee thereof, yearly to be paid to the father so long as he lived, and to the son in fee yearly thereafter, ay and while the said principal sum were repaid; the father living after the terms of payment were expired in the bond, whereby it was provided, that the sum should be paid to the son if the father had died before the term; and the father, after the next subsequent term was expired and past, having granted to the debtor a discharge of that sum; after the father's decease, and the son's also, the heir to that son seeking payment of that sum, and alleging that that discharge, granted by the father, who was only liferenter of the sum, could not liberate the debtor, the fee being provided to the son, as said is; the LORDS found, that, notwithstanding that the bond was of the tenor foresaid, yet that the power of the sum remained with the father, who might uplift or continue the same from time to time, or discharge the same at his pleasure effectually to the creditor in any time of his life, seeing there was no infeftment expede upon the said bond, nor the fee really established in the person of the son; and that obligations conceived in this manner (no sasine specially following thereon) might be effectually discharged, and the sums thereof uplifted by the father, and disponed on by him in his lifetime, notwithstanding of the conception and tenor thereof foresaid; neither was it respected that the father was alleged not to be *suæ rei satis providus*, and that the discharge was purchased by the debtor, without any sums really paid to him therefor, which was repelled, seeing it was found that he might have freely discharged the same.

Act. *Nicolson et Stuart.* Alt. *Advocatus et Aiton.* Clerk, *Gibson.*

Fol. Dic. v. 1. *p.* 302. *Durie, p.* 429.

*** Spottiswood reports the same case:

IN an action pursued by the Laird of Drumkilbo against the Viscount of Stormont, it was found by the LORDS, that albeit William Chalmers of Drumlochie had taken a bond from the said Viscount of 3900 merks, payable to himself at Whitsunday 1619, and in case of his decease before that term, to William his son, and in case of not payment of that principal sum at the said term, the Viscount was obliged to infeft the father in liferent, and the son in fee, of an annualrent effeiring thereto; that yet, at Martinmas 1619, or any subsequent term, the father might lawfully have received payment, or discharged the said sum, before any such infeftment had been taken; in respect the payment thereof was appointed to be made to the father at Whitsunday 1619, and he might have then given a continuation of the payment thereof to any term thereafter, and so he did ever continue to have the full right of that money, until the infeftment was taken according to the provision of that bond.

Spottiswood, (CONTRACTS) *p.* 70.