

1725. July 16.

JAMES and RACHEL BRUCES, and JOHN CLELAND, Merchant in Edinburgh, Husband to the said RACHEL, for his interest, *against* ANNA STEWART, Spouse to Mr ARCHIBALD CAMPBELL, and Him for his interest.

IN a process of mails and duties, at the instance of the pursuers, James and Rachel Bruces, against the tenants and possessors of some tenements and acres in and about Dalkeith, the said Anna Stewart and her husband compeared and craved preference.

The pursuers interest was a bond or obligation *anno* 1701, granted by James Cleland their grandfather to their mother Margaret Cleland, his eldest daughter, for 2000 merks, in name of aliment to her and her children; in farther security of which he granted a procuratory of resignation, and precept of sasine, for infesting them in these lands and tenements, and in which they were accordingly infest *anno* 1707: Both the provision of aliment and the additional security were declared alterable by him *etiam in atriculo mortis*.

The interest produced for Mrs Campbell was a disposition by the said James Cleland *anno* 1703, of the whole subjects above mentioned, to his second daughter, Marion, without any exception of the security formerly given upon them to his daughter Margaret; but no infestment was taken upon this disposition till the year 1710.

Marion having thus a right by disposition to the lands, she conveyed them to Alexander Bruce, first husband to Mrs Campbell, and out of these lands he provided her in a liferent: Upon this title she pleaded a preference, and insisted, That the bond for 2000 merks (the pursuers right) being prior to the disposition in favours of Marion Cleland her author, and the father, James, having reserved to himself a power in the bond to alter, &c. his granting the subsequent disposition to Marion was a virtual revocation thereof; at least, so far as to operate an exemption of the subject disposed from the burden of the said security for the pursuers debt, whatever claim they may have against the granters' heirs.

It was *answered* for the pursuers, That the disposition of the property to Marion was by no means inconsistent with the security of the alimentary provision to Margaret and her children; for the father James must be presumed to have disposed the lands *cum suo onere*, more especially seeing the warrantice of the disposition was only from future facts and deeds; and if he had intended to revoke or alter the security in Margaret's favours, an express deed for that purpose was necessary; and, *in dubio*, no alteration ought to be presumed in a case where the provision is alimentary to one's own children.

THE LORDS found, That the posterior disposition was not a revocation of the prior bond of aliment.

Fol. Dic. v. 4. p. 118. Edgar, p. 191.

Reporter, Lord Cowper. Act. Arch. Hamilton, sen. Alt. Ja. Boswell and Ja. Paterson.
Clerk, Mackenzie.

No 19.
Exheredation
never presumed.