

Case 119. The Commissioners and Trustees of the Forfeited Estates, - - - *Appellants;*
 Elizabeth Stevenson, Widow of Archibald Pitcairn of that Ilk, Doctor of Medicine, *Respondent.*

13th Feb. 1724-5.

Treason—Obligations granted in Prison before Trial.—The Earl of Winton, while in prison previous to his trial and attainder for high treason, granted receipts bearing to be for money advanced to him, but these are not allowed in whole.

It is found, however, that he was entitled to be alimeted out of his estate at that period, and to apply money to the expences of his trial, and for his maintenance in prison for three months; and for such expences a sum of money (2972*l.* 3*s.*) is modified.

GEORGE, late Earl of Winton, was taken prisoner, amongst the rebels, at Preston, on the 13th of November 1715; and committed to the Tower on the 10th of December following. Upon the 21st of January 1716, the earl, while in confinement in the Tower, granted a factory to the respondent for levying the rents of his estate; in virtue of which she, according to her own acknowledgment, received to the amount of 1135*l.* 5*s.* 1*cd.* sterling. The earl also delivered to the respondent two receipts for money, the one for 1000*l.* bearing date the 6th of February, and the other for 4000*l.* bearing date the 16th of same month; and obliged himself to allow those sums to the respondent at compting. He was afterwards attainted of high treason, upon an impeachment before the Lords in Parliament, and his estate was vested in the appellants for the use of the public.

The respondent afterwards entered a claim as a lawful creditor before the appellants, in terms of the act 1 G. 1. “appointing commissioners to inquire,” &c., charging herself with the said sum of 1135*l.* 5*s.* 1*cd.* as received of the rents of the Earl of Winton’s estate, and claiming the sum of 3879*l.* 14*s.* 2*d.* as the balance remaining due upon the said receipts of cash advanced by her to the earl. This claim being heard before the appellants, they, on the 17th of September 1719, “Found that the said receipts or bills were given to the respondent by the late Earl of Winton, after the articles of impeachment were exhibited against him, and during the time of his trial, whereon he was convicted and attainted, and no proof offered of the valuable consideration; and therefore dismissed the said claim.”

The respondent presented her appeal to the Court of Delegates against this judgment of the appellants; and, after a hearing of the cause, the Delegates, on the 1st of March 1723, “Reversed the judgment of the appellants, and found that the said late earl was, during the time of his imprisonment at London, entitled to be maintained and supplied out of his means and estate
 “ for-

“ forfeited, in so far as was necessary for his said maintenance
 “ and defence in the criminal prosecution for high treason car-
 “ ried on against him; and remitted the respondent’s claim to
 “ the appellants in order to take further evidence of the respon-
 “ dent’s having advanced money to the said late earl, and to con-
 “ sider what sum or sums of money should be modified as the
 “ necessary maintenance and supply of the said late earl, during
 “ his said imprisonment and criminal prosecution aforesaid; and
 “ in so far as they should find the same equitable, to state that
 “ sum as a debt upon the means and estate of the said late earl
 “ attained.”

The respondent now brought evidence on her part of the fur-
 nishings to the earl, and the appellants, upon considering the
 same, on the 14th of October 1723, “ Found that the respon-
 “ dent did, during the imprisonment of and criminal prosecution
 “ against the said late Earl of Winton, remit and pay to his use
 “ several sums of money; but that the sum of 2059*l* 1*s*. 8*d*.
 “ sterling was sufficient for his necessary maintenance during
 “ such his imprisonment, and for his defence in the said criminal
 “ prosecution for high treason carried on against him; and as it
 “ appeared to them that the Lords Delegates by their decree,
 “ dated the 14th of December 1722, made upon the appeal of
 “ Charles Menzies, the said late earl’s solicitor in parliament,
 “ against a decree of the appellants, which they thereby re-
 “ versed, had found the said Charles Menzies a just and lawful
 “ creditor on the said estate for the sum of 216*l*. 3*s*. sterling;
 “ and that the respondent by her said claim had acknowledged
 “ the receipt of 1135*l*. 5*s*. 10*d*. sterling, after deduction of her
 “ charges, and exchange of remittances, which sums of 216*l*. 3*s*.
 “ and 1135*l*. 5*s*. 10*d*. they decreed to be deducted out of the
 “ said sum of 2059*l*. 1*s*. 8*d*., which reduced the same to
 “ 707*l*. 12*s*. 10*d*. which they decreed to the respondent in full
 “ of her said claim, and of all demands she had against the said
 “ late earl’s estate.”

The respondent presented a second appeal to the Court of De-
 legates; and after sundry proceedings, they, on the 9th of March
 1724, “ Found that to the sum of 707*l*. 12*s*. 10*d*. of balance
 “ found due to the respondent, there be added the sum of 913*l*.
 “ 1*s*. 4*d*. in lieu of her expences on the said late earl’s trial, and
 “ maintenance whilst in prison, both which sums extended to
 “ 1620*l*. 14*s*. 2*d*. sterling; and found that this sum of 1620*l*.
 “ 14*s*. 2*d*. is to bear interest from the 2d day of August 1716;
 “ and remitted to the respondents to issue debentures ac-
 “ cordingly.”

The appeal was brought from “ a decree of the Court of De-
 “ legates in Scotland of the 9th of March 1724.”

Entered,
 25 March
 1724.

Heads of the Appellants’ Argument.

By the decree of the Delegates the Earl of Winton’s estate is
 charged, to the prejudice of the public, with no less than 2972*l*.
 3*s*. sterling for his maintenance in prison for three months, and

the expences of his trial, without any evidence that any such sum was applied in that way; and the appellants conceive, that the sum of 2059*l.* taxed by them, was more than sufficient for these purposes.

The Court of Delegates has decreed to the respondent the sum of 2756*l.* counting what she levied out of the estate; whereas by her own evidence, lame as it is, no more appears to have been advanced by her to the earl than the sum of 1312*l.*

It does not appear, that the money in question was advanced for the earl's maintenance before his attainder, or his defence on his trial; but from the circumstances of the case, it is more probable, that it was taken up by him to bring about his escape, and to support him abroad after his attainder.

The real estate of the forfeiting person is by act of parliament vested in his majesty from the 24th day of June 1715; and the power given by that act of entering claims to charge such real estate, is only for rights, debts, or incumbrances affecting the same, before the day whereon it is vested in his majesty: but the debt claimed in this case, is not pretended to have been incurred till several months after that day.

Heads of the Respondent's Argument.

The appellants admitting that the late earl was entitled to be supplied out of his estate during his imprisonment, so far as was necessary for his maintenance and defence, it is not material that the said receipts bear date after the 24th of June 1715, from which period the estate was to be vested in his majesty, or the 13th of November 1715, from which period the earl was to stand attainted. It appears by sufficient evidence, that the said receipts were executed by the earl, before his attainder, at the times they respectively bear date.

The respondent has brought as sufficient evidence, as the nature and circumstances of this affair would admit of, that she really and truly advanced more money than is decreed to her; and her evidence was such as fully to satisfy the Court of Delegates. And since the earl's maintenance and expences of his trial must have amounted to a very considerable sum, and as the remittances are proved to have been made to him on that account by the respondent only; there can be no doubt but that the money was truly applied to that use.

The respondent, also, having advanced all the said money claimed by her in the beginning of the year 1716, and being herself obliged to pay interest for what she still stands indebted, there was just ground for the Court of Delegates giving her interest for what she so advanced.

After hearing counsel, *It is ordered and adjudged, that the decree of the Court of Delegates complained of in the appeal, whereby the said Court found and adjudged, that the sum of 913*l.* 1*s.* 4*d.* sterling should be added to the sum of 707*l.* 12*s.* 10*d.* sterling, decreed to the respondent by the appellants the said 14th day of October 1723, be reversed; and that the said judgment and decree given*

Judgment,
13 Feb.
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given by the appellants, allowing the said 707*l.* 12*s.* 10*d.* be affirmed.

For Appellants, P. Yorke. Ro. Dundas.
For Respondent, Will. Frazer. C. Talbot.

The Governor and Company of Undertakers for raising Thames Water in York Buildings, - - -

John Haldane, Esq; - -

Appellants;

Respondent.

Case 120,

Edgar,
29 Dec.
1724.

14th April 1725.

Jurisdiction.—The York Buildings Company, which had purchased large estates in Scotland, was liable to be sued in that country, in a personal action relative to a transfer of stock, though such transfer could only be made in London.

IN February 1724, the respondent brought an action against the appellants before the Court of Session, setting forth, that in the month of June 1720, the respondent having occasion for money at London, borrowed 3000*l.* sterling from the appellants, and as a security for re-payment of the same, caused one Gibson, who held stock in his name in trust for the respondent, to transfer 6000*l.* of the appellants' capital stock, into the hands of the appellants, pursuant to their public advertisements at that time for lending of money for a month :

That the respondent being obliged to go to Scotland before the 21st of July, the day when the 3000*l.* became payable, made a proposal to the appellants to pay the same to their agents in Scotland, the 6000*l.* stock being to be retransferred to his trustee by the appellants; which being agreed to, a bill was drawn on the respondent, dated 21st July 1720, for 3147*l.* 18*s.* 10*d.* payable to the appellants' agents at 14 days' sight, which the respondent accepted on the 27th of July at Edinburgh, and duly paid on the 10th of August following :

That this payment being made, and the conditions on the respondent's part fully performed, upon the faith and belief that the 6000*l.* stock, pledged with the appellants, was by them retransferred to him or his trustee; the respondent conceived that he had no more to do, but to order the same to be sold as his occasions required; but instead thereof, and when the respondent ordered the same to be sold at 150 *per cent.* (which price that stock yielded after the said 10th of August) he found no stock in his or his said agent's name, in the appellant's books; but that the same was disposed of to the use of the appellants :

That after many fruitless applications on the respondent's part, to have justice done him in an amicable way, he was at last obliged