

to me and mine. Further, that, in a transaction betwixt merchants, an assurance to make good is of the same import as an obligation binding and obliging among persons versed in stile, of which merchants may be presumed to be altogether ignorant. If Mr Livingston had wrote from London to his brother-in-law to pay such a debt for him, or to make a gift in his name to any relation, and at the same time assured his brother-in-law that he would make the money, so to be advanced, good, it is thought Mr Livingston would have been as much bound to repay the money as if he had bound and obliged himself in way of bond to repay it. And although there is no fixed term for the repayment, it will not from thence follow, that the party so obliged was not debtor at all, and that some time or other imports no time. The plain meaning is, he had a discretionary power as to the time of satisfying the debt he had undertaken; but satisfy it he must some time or other, that is, in his lifetime, or by such deed executed in his lifetime as might make it effectual after his decease. And the words of the letter, some of yours, certainly must be taken for one or other of Mr Gordon's children; so that if the defender could show that Mr Livingston had made good this superadvance to any one of the children, it might operate a discharge of the debt; but this cannot be qualified.

THE LORDS found, that Mr Livingston was not bound by his missive letter to make good or repeat to Mr Gordon the annuities paid by his father or himself over the principal sum of L. 200 Sterling, and interest thereof.

Fol. Dic. v. 4. p. 23. C. Home, No 153. p. 260.

SECT. II.

In what cases an offer must be accepted.

1610. July 12. ANDREW KER *against* CONSTABLE of DUNDEE.

PARBROTH as principal, and the Constable of Dundee and Dalhousie as cautioners, being bound to John Wemyss for 4000 merks, and he making Strakmertoun assignee, Strakmertoun making Dalhousie, and Dalhousie making Andrew Ker assignee to Parbroth's bond, Andrew charged the constable, who suspended, that Andrew could not charge, because, by his missive, he had promised that he and Dalhousie should bear burden for their parts of the sum, the Constable doing the like for his third, as was agreed, by communing betwixt them, and so Andrew could only charge for the third. Andrew answered, That his offer could not bind him, not being accepted by the

No 2.

No 3.

A promise made by one of three cautioners, that he, and another of the cautioners, should bear equal burden with the third, of the sum, altho' in effect not accepted by the third cautioner, in so far as he had caused the creditor charge one of the cautioners for

No 3.
the whole
sum, yet was
found obli-
gatory, and
the caution-
ers reason of
suspension
founded
thereupon
was found
relevant.

cautioner, but in effect rejected and refused ; because he had thereafter caused Strakmertoun charge Dalhousie for the hail sum, under the pain of horning, and thereby forced Dalhousie to give him a bond for the hail sum ; notwithstanding whereof, the LORDS found the reason of suspension relevant against my Lord Chancellor's vote.

Fol. Dic. v. 2. p. 15. Haddington, MS. No 1954.

1664. June 25.

ALEXANDER ALLAN *against* MR JOHN COLZIER.

No 4.

ALEXANDER ALLAN pursues Mr John Colzier to pay a sum of L. 92 pounds, addebted for the defender's mother, and that upon the defender's missive letter, by which he obliged him to pay the same.

The defender *answered*, Absolvitor ; because, by the missive produced, he offered him to become the pursuer's debtor for the sum due by his mother, being about L. 92 ; but, by a postscript, requires the pursuer to intimate to him, or his friends at Falkland, whether he accepted or not, which he did not then till after the defender's mother's death, and so it being a conditional offer, not accepted, is not binding.

Which the LORDS found relevant and assoilzied.

Fol. Dic. v. 2. p. 15. Stair, v. 1. p. 206.

SECT. III.

Personal Obligation.

LAIRD of LUNDIE *against* EARL of ARGYLE.

No 5.

A bond of a moveable sum being made to be paid to the creditor and his heirs, is found, by the LORDS, to appertain to the creditor's executors, and not to the heir, except the bond had expressly excluded the executors' assignee.

Auchinleck, MS. p. 146.

1627. March 16.

NISBET *against* CRAUFORD.

No 6.

AN obligation is made by a debtor to his creditor, to pay to him, and his wife, a certain sum, or to the longest liver of them two, their heirs and executors.—