

1696. November 25. GILBERT MORE *against* PATRICK MURRAY.

PHILIPHAUGH reported Gilbert More, writer, against Patrick Murray, collector, upon a decret of the bailies of Edinburgh, on a bank-bill of £50 sterling, bearing to be such a number;—More ALLEGING he had the same bill, and lost it, and so Murray must be liable, having uplifted the money: For the nature of these bank-bills is,---whoever presents it, is paid; and they have nothing to discriminate them from one another, but the number they are marked with, and there is not two of them which bear the same number. Murray's reason of suspension and reduction was,---the decret lacked probation, it not being proven that this was More's numerical bill.

ANSWERED,---The decret bears an acknowledgment that it was the same bill; and, though he denied it now, because it was not subscribed, yet they offered to fortify and instruct it *per membra curiæ*; and he did not condescend from whom he got it.

REPLIED,---These bank notes being invented for dispatch and celerity of trade, they are neither bound to keep an account-book anent them, nor to notice whence they have them; because they pass through twenty hands, as money or any fungible, in which case no man is bound to tell from whom he had them; no more than the other can prove *quomodo desiit possidere*.

The Lords repelled the reason, and found the letters orderly proceeded, on the presumptive probation contained in the decret, and that he declined to condescend how he got it.

*Vol. I. Page 736.*

1626. November 26. GORDON of SEATON *against* The HEIRS of MR EDWARD WRIGHT.

HALCRAIG reported Gordon of Seaton, against the Heirs of Mr Edward Wright, advocate, for relieving him of a proportional part of the sum of 1200 merks they were owing to John Hall, and which haill sum he has paid.

ALLEGED,—You and Sir James Stamfield gave a bond of relief to free Mr Edward, our father, of that debt, and to retire the bond, and procure him a discharge; and so you can never recur against his heirs for any part of it.

ANSWERED,---Sir James and I are not bound conjunctly and severally; and so can only be liable *pro rata*, and not *in solidum*.

REPLIED,---Where the obligation is divisible and prestable *per partes*, there *duo correi debendi* are only bound *pro virili parte*; but if it be *jus individuum*, or *ad factum præstandum*, as here, to retire the bond, and procure a discharge, each of them is liable *in solidum*. Others thought this too nice and subtile, seeing the payment of the sum is divisible: Therefore they considered that Sir James Stamfield, the other obligant in the bond of relief, being broken and insolvent, his part must fall on Gordon of Seaton; even as, in the case of two heirs-portioners, if one of them turn irresponsal, the other is liable in the whole: and accordingly, in this case, the Lords found Gordon had no access to crave any recourse of relief against Mr Edward Wright's heirs, but was liable to relieve them *in solidum*.

*Vol. I. Page 737.*