

due to himself, the adjudger, and Orton's being paid and relieved of his cautionary for the Lord Caithness. Sir Robert made over the adjudication, with the burden of Orton's relief, to Broadalbin, who had right to the back-bond, upon receiving payment from him of 100,008 merks. Sir John St Clare was pursued for the payment of Orton's debt, as if the back-bond, *quoad* Orton, had been contravened. Alleged for the defender, 1. The back-bond imports no obligation on Orton, but only a faculty to Sir Robert to have retained the adjudication till Orton's debt might be paid, which he had a prospect to acquire; 2. The disposing the adjudication, with the burden *ut supra*, was no contravention of the obligation. The Lords found the back-bond did import an obligation in favours of Orton; but, before answer to the second, ordained Southesk and Sir John to concur in the process against Broadalbin, either for restating Sir John *in statu quo*, and bringing the adjudication into his person, or for declaring it liable, and really burdened with Orton's debt.

*Page 48, No. 214.*

[This case is more distinctly reported by Fountainhall.—*26th July 1687.*]

1687. *July.*      HOLBURN of MENSTREY *against* DAVID MAIN.

A FACTOR'S holograph discharge to tenants, without witnesses, sustained sufficient to found the master's recourse against the factor's cautioner.

*Page 59, No. 248.*

1687. *July.*      ROBERT MUIR *against* The EXECUTORS of his FATHER.

BONDS secluding executors, found to be heritable *ab initio*, as those bearing an obligation to infest, though the creditor die *ante terminum*; that being only respected in bonds heritable by payment of annualrent, which are not considered as heritable till that be payable. This is misplaced.

*Page 80, No. 329.*

1687. *July.*      JAMES BLAIR, Petitioner.

AN adjudication not being recorded *debito tempore*, the Lords refused to give orders to record it with an antedate. *Vide* No. 835, [————— *against* —————, February 1688; Dict. p. 13,559.]

*Page 80, No. 330.*

1687. *July.*      JOHN BALLANTYNE *against* The CREDITORS of PROVOST GRAHAM.

A BOND being granted to a man and his wife; and, after their decease, to