

1694. December 11. GEORGE DAVIDSON *against* MR WILLIAM DUNLOP.

GEORGE Davidson, brewer in Leith, against Mr William Dunlop, Primar of the College of Glasgow, on a bond granted by him and other five, about their Carolina plantation, for £67 sterling, to Sir John Hale. His reason of suspension was,—There is a discharge granted to Francis Scot, and John Inglis advocate, two of the debtors; and so you can only exact the other four parts from me. ANSWERED,—That discharge was not on payment of their shares, but only *ex gratia, et merum pactum de non petendo*; and does not prejudice his recurring against any of the rest to pay the whole; reserving their relief *pro rata*. REPLIED,—It bears to be for weighty causes, and discharges them *simpliciter*.

The Lords found it more than a *pactum de non petendo*; and assoilyied from these two parts, and only decerned for the remanent. But some of the Lords would have examined the parties, before answer, if it proceeded upon actual payment or not. *Vol. I. Page 650.*

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1694. December 12. RANKINE *against* SMITH.

THIS was a reduction of a discharge of tutor-accounts, on this reason,—That it was granted by her *in confinio minoritatis*, being but some few months past twenty-one, and proceeded without count and reckoning made; and he obtained the husband's consent to the discharge, he being in *æstro amoris*, and the other offering to oppose the marriage if he did not.

The Lords repelled the reason of reduction; and found she might discharge for nothing, unless they could instruct threats or circumvention used; and on such pretences all tutors' discharges might be questioned. *Vol. I. Page 650.*

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1694. December 13. MR GEORGE BURNET *against* LADY HALLGREEN.

MR George Burnet, schoolmaster in Canongate, pursuing Lady Hallgreen, to count and reckon for her intromission with her husband's estate, in regard she was preferred to the gift of his escheat, in so far as might extend to sixteen chalders of victual for her aliment; and Mr George, for his debt, was brought in *secundo loco*. ALLEGED,—She could not depone, being *vestita viro*. ANSWERED,—She had a separate *peculium*; and, in so far as concerned that, she was liable. *2do*. She ALLEGED,—What she had intromitted with was applied to the use of the family.

The Lords thought any intromission she had, preceding the establishment of the locality in her person, could not make her personally liable; but ordained her, before answer, to depone anent her intromissions, and the time thereof.

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