

ming and Frederick Hamilton, merchants in Glasgow. The question being, if the general balance was converted to the use of the co-partners; and the presumptions on both sides not being sufficient, before answer, the Lords ordained John Cumming to produce his books; and, in case the affair were not cleared that way, allowed the Reporter to call the arbiters before him, and examine them upon the same.

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1696. November 19. JOHNSTON and STEIL *against* LUDOVICK WILLISON *alias* CALANDER of DORATER.

RANKEILOR reported Johnston and Steil against Ludovick Willison *alias* Calander of Dorater. It was an objection against the pursuer's active title, as being an adjudication of a moveable debt. ANSWERED,—Though the original bond be personal, yet it was made heritable by a comprising deduced thereupon. REPLIED,—That apprising being led by the tutor, he could not alter the destination of the first succession. DUPLIED,—Though that be true, yet there was no inversion here; because they were both heirs and executors, and had the right *jure sanguinis utroque modo*.

The Lords thought a tutor cannot, by taking a collateral accessory security, divert the channel of succession; yet here, both rights centering in one person, they sustained the title.

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1696. November 19. KENNEDY and MUIR *against* MATTHEW CUMMING.

IN the process, Kennedy and Muir against Matthew Cumming, a transaction made with a minor being reduced *ex capite lesionis*, the other party craved caution that they should not crave to be restored, because she was still minor, and might revoke what she had now done any time before attaining her perfect age of twenty-five.

The Lords thought they could not force men *satisdare*, where the law did not oblige them. *2do*. If there were a plain and enorm lesion, it cannot be presumed she would seek to be restored against this decret, and subject herself to the lesion; so there was no room for restitution, else one who was pursued to pay a debt owing to a minor might say,—I will not pay, because you might revoke this afterwards; at least, you must find caution to secure me against your craving reposition *intra annos utiles*.

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1696. November 20. ALEXANDER TAIT *against* CHARLES MURRAY of HALDEN.

RANKEILOR reported Alexander Tait, merchant, against Charles Murray of Halden. The reason of reduction of the Commissaries' decret was,—that they

had committed iniquity in sustaining the scroll of an account probative against him, only because it was written by him, though it was neither subscribed nor delivered in by him to Tait; and that the Lords, on the 1st of July 1665, *Nasmith* against *Bower*, had found such schedules not probative amongst merchants, unless it had been a current count-book, which always prove *contra scribentem*.

ANSWERED,—The account, all written by Halden, being now in Tait's hands, it presumes delivery to him, unless the contrary be proven; likeas there was another double of it in Thomas Dishington, Halden's own servant's hand, and Tait was content to produce his own count-book in fortification, where this article is so posted to Halden's own behoof.

REPLIED,—He got this account out of Sir Thomas Moncrief's hands, to whom it was given for clearing Halden's account with the Lords of the Treasury.

The Lords, for expiscating the matter of fact, ordained Sir Thomas to be examined anent his having said account, and *quo nomine* he got it; and if he gave it to Tait, and had warrant from Halden so to do; as also Dishington to depone anent his knowledge in the affair, and Tait's count-book to be inspected how this article is inserted. This was judged safer than to sustain unsubscribed accounts as probative in the general.

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1696. November 24. THOMAS LAURIE and GEORGE WARRENDER *against* ROBERT RAMSAY of BLACKCRAIG.

THOMAS Laurie and George Warrender against Robert Ramsay of Blackcraig, for payment of 3000 merks, contained in two bonds granted by Blackcraig to the deceased Gilbert Stuart, blank in the creditor's name, and afterwards filled up in Bailie Warrender's name and delivered to him. The reason of suspension and reduction was,—that when Gilbert Stuart filled up Warrender's name in thir two bonds, he gave a backbond and declaration, bearing, that these bonds were consigned in his hands for security of two bills he had given him; and it was declared, if these two bills were paid, the bonds should be void and null, and delivered back to Gilbert Stuart: *Ita est*, it is offered to be proven these bills were satisfied, and so the bonds are become extinct.

ANSWERED,—*Esto* this were true, yet, Gilbert Stuart having new dealings with Bailie Warrender, by posterior bills drawn upon him by Mr Alexander Carstairs, factor in Rotterdam, Gilbert, for his security of those new bills, consigned the same bonds in Warrender's hands; and they agreed to retire and cancel the first backbond, and Warrender grants a new one in thir terms,—that, thir posterior bills being paid, the bonds should be extinct and given up; but thir last bills were never answered, and so the bonds subsist for security thereof.

REPLIED,—They being consigned for security of the first bills, on this express condition, that, if they were paid, the bonds should be extinct, no private transaction betwixt Gilbert Stuart and the Bailie could make them reconvallesce; for it was all one upon the matter, as if they had been granted in corroboration of the bills; in which case, the bills being satisfied, the bonds behoved to fall in consequence. And what if Gilbert had taken a discharge instead of the backbond. They could never have been used again; and this was equivalent,