

and the backbond became Blackcraig's evident, as well as Gilbert Stuart's; and, if conceived in his favours, could not be taken from him without some deed of his own, and his consent obtained.

DUPLIED,—Blackcraig having signed these bonds blank in the creditor's name, and delivered them to Gilbert Stuart, he has been probably debtor to him in the like sums, and gave him an absolute trust to use and dispose of the bonds as he pleased, to be a fund of credit to Gilbert, which he might transmit from hand to hand, and consign to severals, one after another, for promoting his trade; and Blackcraig is not concerned what use he made of them, seeing, if they were ten several times impignorated for facilitating commerce, yet he could pay the sum but once; which he had not yet done; and they needed not his consent to the renewing of the consignment for security of the two bills, seeing his trusting them blank to Gilbert empowered him to make use of these bonds as oft as he pleased.

The Lords found, That he was not concerned in the second transaction, and the bonds might be used for security of the two bills, without any new and special consent, the same being sufficiently transmitted by his trusting Gilbert with the blank bonds; and therefore repelled Blackcraig's reasons of suspension.

*Vol. I. Page 735.*

1696. November 24. PATRICK MURRAY *against* SIR THOMAS KENNEDY.

BETWEEN Patrick Murray, the Collector, and Sir Thomas Kennedy, who quarrelled an article in his account of £413 sterling, paid to Charles Murray of Halden, his father, on this ground, that, by his commission, he was allenary bound to pay in the excise to Sir Thomas, and so he could not invert and mis-apply at his own hand.

ANSWERED,—The payment was warrantable and legal, *1mo.* Because Halden was a partner in the tack, and his share will, in the event of the count and reckoning, be more; and he paid others without any special order from Sir Thomas; and these are not quarrelled, so it is invidious to refuse this. *2do.* By a stated account, Sir Thomas acknowledges he has received up all the instructions of the articles of the account, except this of Halden's; *ergo*, there was no more objected against it but the want of instruction, which is now produced.

REPLIED to the first, *Non constat* what his share will be, and whether there will arise profit or loss from the tack; and he was precisely bound to count and pay in to Sir Thomas, and no other; and any payments made to others which were allowed him, was not *qua* partners, but as commissaries or receivers. *2do.* The declaring, at the foot of the account, that this was not instructed, cannot import the passing from any other objections against the relevancy, and allowing of the article.

Yet the Lords found this, conjoined with his father's being a partner in the tack, was a sufficient acknowledgment of the payment, and so the article could not be now quarrelled.

*Vol. I. Page 736.*