

1714. November 10.

Sir ROBERT FORBES and his Factor *against* GEORGE WATSON, Merchant in Edinburgh.

THE deceased Alexander Forbes having obtained a bond from Lieutenant-Colonel Lumsden, Major Munro, and some other officers of Colonel George Hamilton's regiment, for several small sums, in part payment of what he had advanced for clothing the regiment; Sir Robert Forbes, who, as creditor to the said Alexander, had obtained a gift of his escheat, recovered decreets of special declarator against these officers for their respective debts; and having arrested their arrears in the hands of the Commissioners of the equivalent; when he came to insist in a furthcoming, an interest was produced for George Watson, who craved to be preferred upon an assignation from the principal creditor; but Sir Robert's arrestment being prior, he founds upon and produces letters of intimation of his assignation, and an execution thereof, at the Cross of Edinburgh, pier and shore of Leith, bearing, That the messengers made due and lawful intimation to Colonel George Hamilton, Colonel of her Majesty's regiment of foot guards, and his Lieutenant-Colonel, Major, Captains and subaltern officers of the said regiment, of the said assignation, whereby he alleged the original creditor was denuded.

Against this intimation, as being disconform to the bond assigned, several nullities were objected by Sir Robert; as *1mo*, That the bond referred to by the intimation is granted by the officers of the foot guards, whereas the obligants in the bond assigned belonged to another regiment; *2do*, That the intimation related to a bond wherein Colonel Hamilton is bound, whereas he does not subscribe the bond founded on; *3tio*, That all the officers are mentioned bound in the intimation, whereas seven only subscribe the bond in controversy; *4to*, That the sum due by the subscribers, as mentioned in the letters of intimation, is greater than the sum in the bond assigned; *5to*, That the designation of the sum ought to have been in the intimation, conform to each particular officer's debt, as mentioned in the bond assigned; *6to*, That the execution of the letters of intimation did not bear the assignation to be produced.

*Answered* for Watson the competitor; to the *first*, That the regiment is sufficiently designed by "Colonel George Hamilton," and if no more was necessary, *superflua non nocent*, specially seeing there were not two Colonels of that name. To the *second* and *third*, it was *answered*, That albeit the intimation bears more persons than are truly signing, yet that also falls plainly under the above-mentioned brocard. Besides, that it was reasonable to mention the other officers, though not signing, because the clothing was for the whole regiment, though there were but a few that undertook payment, by signing the bond. To the *fourth*, That the difference is of no import, because it was the creditor's purpose to have had as many officers subscribing as would have extended to the

No 2.

Intimation was found ineffectual, the execution not bearing that the assignation had been produced.

No 2. sum mentioned in the intimation. To the *fifth*, That the date, sum, and creditor's name are specially expressed; nay, the onerous cause of contracting the debt condescended on, whereby the obligation was so specially designed, that no farther was needful. To the *sixth*, it was *answered*, That though production of the assignation be requisite in a personal intimation, yet when it is edictal, the warrant is not the assignation; but letters of intimation under the signet, which passing upon a bill, the assignation must necessarily be produced, when the bill is passed. So that the letters supersede the necessity of any farther production of the assignation.

THE LORDS repelled the five first nullities; but as to the last, they found the execution of the letters of intimation null, in regard the same did not bear production of the assignation.

For Watson, *Sir Ja. Nasmyth.*

Alt. *Duncan Forbes.*

Clerk, *Robertson.*

*Bruce, v. I. No 2. p. 2.*

*See APPENDIX.*