

lonel M'Lachlan for behoof of;" and then gives the young Pretender all the titles that he assumed to himself. The defender pleaded this first as an evidence that the money was not robbed but paid willingly; *2dly*, That no action could be sustained on such a writing. The first was repelled, because of the strong proof brought of force; and as to the second, they considered Kingston as then in the power of the rebels, and the assignation only as a mandate to solicit payment, which could not be done with any effect without giving the young Pretender those titles, and therefore repelled that defence also, 17th December 1751. But on a reclaiming bill, in which the assignation was insisted on as evidence that Kingston himself was a rebel, and that no action could be sustained for Cess or other exactions, that the rebels took from one another to carry on the Rebellion, and *2do*, that such a writing could not be the title of any action in a Court of law; upon answers, the Court called on the defenders, whether they could give another probable evidence of Kingston's disaffection to the Government besides that writing, or of his being reputed a Jacobite;—and on their owning that they could not, the Court found that notwithstanding that writing, there was sufficient evidence that the money was taken by force. But on the second point, the Court altered their opinion. I observed that the writing deserved to be burnt by the hands of the hangman, and were this in the proper Court, would be so used; and by a great majority the Court found that no action could be sustained on that writing.

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1752. June 3. EARL of GALLOWAY *against* ARCHIBALD STEWART.

SIR JAMES STEWART of Burray having granted a bond in the English form for the double sum of L.200 sterling, the single sum of L.100 being to be paid when Sir James should obtain the King's remission of a murder, the Lords found that action did not lie on that bond. (See DICT. No. 16. p. 9465.)

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1752. February 7.

SIR MICHAEL STEWART of BLACKHALL *against* EARL DUNDONALD.

SIR MICHAEL STEWART sued the Earl of Dundonald for payment of 100 guineas, with interest from the time of his father's succession to the honours and estate of Dundonald, on his grandfather Kilmarnock's bond to Mr John Stewart, the pursuer's father, in 1698, when the then Earl of Dun-

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donald, his brother, had two sons living, obliging him for a certain sum then received, to pay him 100 guineas how soon he or the heirs of his body should succeed to the honours and estate of Dundonald, with penalty and interest from the term of payment. The defence was that he had not succeeded to the whole estate, but a part of it sold, and the half of what remained evicted by the Duke of Hamilton; but the Court took up the case on another footing, as being *contra bonos mores captare votum mortis viventis*; that at best it could be no better than the case betwixt Dr Abercrombie and Lord Mordaunt, (No. 17. *supra*.) and if we knew the sum paid, we could decree no more than that sum and interest according. We found the bond void and null, reserving to the consideration of the Court whether the pursuer ought to be repaid what money was paid for granting the bond, the pursuer proving the same.—Adhered by the President's casting vote. (See DICT. No. 61. p. 9514.)

See NOTES.

See USURY.