

1772. *HOUSTON and COMPANY against CLAUD and WALTER STEWARTS.*

It is now a fixed point, that *nova debita* do not fall under the Act 1696. This was so found *anno 1772*, in the case of Houston and Company against Claud and Walter Stewarts. The debt there was contracted, and the money advanced, upon interim personal security, and so continued for seven months; but it was proved by witnesses, that it had been agreed verbally at the time of lending, and a note, though not holograph, was produced to that purpose, that heritable security should be granted for the debt. Accordingly, this security was granted by Maxwell, for whose behoof the money was advanced, but on the eve of his bankruptcy, and infestment taken. And though his creditors afterwards brought a reduction on the Act 1696, the Lords were of opinion that it was a *novum debitum*; and on that account the reasons of reduction were repelled.

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1771. *CREDITORS of JOHN NISBET of NORTHFIELD against CAIRNS.*

THE same was found in the competition among the Creditors of John Nisbet of Northfield, determined *anno 1771*. In this case, Cairns having agreed to lend the money to Nisbet at the Martinmas, on heritable security, committed the execution of it to Hart, and gave him the money. Hart advanced the money piece-meal to Nisbet, on interim receipts; at last, 19th January, he took an heritable bond for the whole to Cairns, who was infest 20th February. On the 21st February, Nisbet retired to the Sanctuary; and soon thereafter was rendered a notour bankrupt. The creditors having brought a reduction on the Act 1696, the Lords repelled the reasons, and assoilyied. It is observable, that, in this case, Cairns had no interim security. It was not therefore so strong a case as Houston's.

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1777. *August . JOHNSTON, &c. against WARDEN.*

THERE have only been two decisions on that clause in the Act 1696, concerning the reduction of bonds, as granted for debts not contracted properly at the time. One is observed by Kames and Falconer, *Dempster against Kinloch, June 1750*; another occurred 15th July 1777, in the case *Warden against Johnston, &c.*

In this case, Warden, as cautioner for Law, in a tack of the parks of Innerleith, finding that Law was, or would be in arrear, obtained from him an heritable bond and infestment for L.300, over certain houses in Edinburgh, (January 1772,) not for relief of his engagement, as he ought to have done, but as for money lent; and, in May thereafter, he paid up said arrear, amounting not only to said L. 300, but to L.73 more; for which last sum he also took another