

apparent heir, to whose behoof Blackwood hath adjudged, would be obliged to warrant Sir Robert's assignation.

It was REPLIED, That the assignation, being upon deathbed, is, in effect, a legacy, which can never take effect but *deductis debitis*.

The Lords found, That Hamilton had the best right to the sum, by Sir Robert's assignation; and that Sir John, who was the only creditor, could not be compelled, or had no interest to quarrel the same.

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1676. *January 27.* The MASONS and WRIGHTS of EDINBURGH *against* The SIEVE-WRIGHTS, UPHOLSTERERS, and PLUMBERS.

IN the mutual declarators between the masons and wrights, and other trades incorporated with them, the Lords did, upon the 15th day of December last, find, That five of these trades, that were anciently incorporated before the set, were capable of being elected deacons to the wrights and masons; but the sieve-wrights, upholsterers, and plumbers, being received into that corporation since the year 1646, long after the sett, they appointed the parties to be heard as to them.

It was ALLEGED for the wrights and masons, That these trades were not in the like case with the former; because they were, after the king's decret-arbitral, settling the constitution and government of the town; which bears expressly, that the deacons should be expert men in their own crafts: but it cannot be pretended that these three petty trades could be expert either in the crafts of wrights or masons, or any of the other trades incorporated before the set; and it were a great detriment to the government of the town, that persons of so mean employment might be capable to be deacons, and so capable of the government of the town; nor could they have skill to oversee the other trades: and their admission, which is produced, limits them to particulars; so that they are incapable of any further, and consequently cannot be thought to be admitted to the highest capacity of that incorporation: for all free donations are strictly to be interpreted, especially privileges; neither could any new trade be assumed after the sett, without consent of the king and the town.

It was ANSWERED, That albeit the masons and wrights, and their fraternity, could not incorporate any trade without consent of the town; yet it could not be denied but that such trades as, by posterior custom, did arise by division of the trades formerly incorporated, could not be excluded from all the privileges thereof: for if, by time and custom, the wright craft were divided, and a distinct craft of coachmakers, cabinmakers, or turners made, they were all truly wrights, though their privileges were not extended to all manufacturers in timber. And, in like manner, cutters of marble, or carvers of stone, though they could do nothing to laying, were yet truly *lithotomi* or masons: and so could not be excluded from all the privileges of the masons: and, therefore, these three trades, being all workers in timber, are wrights, and cannot be excluded from all their privileges: for who can refuse that a sieve-wright is a wright, and an upholsterer a maker of chairs, chests, and coffers: And plumbers, though they work in lead, cannot work unless they be wrights; but much more when

they have admissions, expressly incorporating them to the *confratri* of masons, wrights, and their brethren, by their admissions produced. Likeas they are all distinct trades; having distinct masters; and breeding apprentices; and as fit to be deacons as the other trades already incorporated; who, in the oversight of the work of the incorporation, take the assistance of the masters of the particular trades; neither could the town hinder; but they have actually consented, and have received the composition of those three trades: nor is there any pretence of the king's consent, who acted, by reference, as arbiter, and considered only the balance betwixt merchants and trades: and, seeing these trades have always, since their erection, exercised all social acts, by voting in the election of deacons, and being boxmasters, there is no pretence for excluding them from being deacons: and, *in dubio*, the admission should be interpreted against the wrights and masons, granters of the admissions, who, though they limit their trades as to the extent of their trades, yet it is without any limitation as to privileges.

The Lords found all these three trades capable to be deacons likewise.

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1676. *February 3.* THOMAS CULTIE and ——— HUNTER *against* EARL of AIRLY.

THOMAS Cultie and ——— Hunter pursue the Earl of Airly, upon a bond of corroboration granted by him, corroborating two bonds granted by his father after this Earl was infest in the estate; for which two bonds he could not be overtaken but by this bond of corroboration only.

It was ALLEGED for the Earl, That the pursuers have no title or right to this bond of corroboration, but only to the two bonds corroborated; the assignation whereof doth not so much as contain that ordinary clause,—“With all that hath followed, or may follow thereupon,”—albeit it be granted after the bond of corroboration; and, therefore, it must be understood that the cedent did, of design, forbear to assign the bond of corroboration, that the defender might not be distressed thereupon.

It was ANSWERED, That the assignation to the principal bond and debt carrieth with it, without any express clause, all accessory securities; *quia accessorium sequitur suum principale*, unless there had been an exception or reservation; which is the ordinary way; otherwise, the bond of corroboration would, without consideration, be evacuated: for it could not belong to the cedent, seeing he is denuded of the sum; and it is now pretended that it could not belong to the assignee; but here the matter is very clear, that the cedent designed not to reserve the bond of corroboration; because it is produced by the assignee, which presumes the delivery thereof to him: And that clause,—“With all that hath followed,” &c. is *ex stilo*; as is the clause,—“With power to pursue, compone, and discharge:” yet all of them are implied in the very assignation to the debt, unless they be reserved.

The Lords sustained process upon the assignation; and found it reached the bond of corroboration, as being delivered to the pursuer.

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