

That where there was no quot-masters named by the bishops, the commissaries should be countable for the quots of all testaments confirmed by them; which would be illusory, if their deutes were not liable for the quots of testaments confirmed when they were deutes.

It was ANSWERED, That the injunctions mentioned no deutes; and, though it did, it could only extend to the testaments confirmed by the deutes when they actually sat.

The Lords found the deute also liable for all testaments confirmed when the deute sat; seeing he ought to have secured the quot, before he confirmed the testament; if he had not made count and payment thereof to the principal commissary.

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1680. *July 29.* Mr WILLIAM AIKMAN *against* JAMES TARBAT.

Mr William Aikman pursues James Tarbat, as representing his father, for payment of the balance of an account betwixt the pursuer's father and the defender's, signed by both.

The defender ALLEGED Absolvitor; because to the count subscribed there is subjoined a new count, all written with the pursuer's father's hand, by which the pursuer's father is stated debtor, as by note, in £1000, to the defender's father: and therefore craves to be assoilyed from the count, and to pay him the balance of the last count; which though not subscribed, yet being the hand-writ of the pursuer's father, produced by himself, it is probative in the same way as notes of receipt written by creditors' hands upon their principal bond; which are always allowed in part payment of the bonds, though not subscribed, though bonds be more solemn writs than counts: and cannot be presumed written *spe numerandæ pecuniæ*, or upon some design which did not follow; being immediately subjoined upon the same page with the principal subscribed account.

The PURSUER ANSWERED, That such unsubscribed notes upon accounts cannot prove. And, though it could, the balance of the unsubscribed account bearing, (as per note,) hath no effect, unless the ticket were produced: for, wherever there is a subscribed count delivered, which used to be retired upon satisfaction, it is ever presumed retired and satisfied, unless it be produced; and therefore accounts or missive letters relative to bonds or tickets, have no effect without the bonds or tickets; for no man can remember what letter he writes.

The Lords found the unsubscribed account subjoined to the account on the same page, and written by the accountant's hand, probative to take away the subscribed account; but not to burden the accountant with the balance of the unsubscribed account, seeing the balance bears, *as per note* given to the creditor of the balance, unless that note be produced, which is otherways presumed satisfied and paid.

*Vol. II, Page 793.*