

The Lords found the oath did not prove the acceptance of the agreement ; nor that the qualifications of the fraudulent silence amounted to make Mr Dallas liable in the same.

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1696. *February 4.* CHARLES JACKSON and his CHILDREN *against* SIR JAMES COCKBURN of that ilk.

THE Lords found the count produced, fitted betwixt Andrew Houston, one of the copartners, and Sir James, behoved to be the rule of counting in this process, both *quoad* charge and discharge ; unless Sir James would produce the books, or some other more authentic document, to convell the same ; in regard ye cannot use it for the charge and reject it for the discharge ; for that were *idem approbare et reprobare.*

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1696. *February 4.* TWEEDDALE and PIRIE, Litsters in Edinburgh, *against* the other LITSTERS Incorporated with the Walkers and Bonnetmakers.

NEWBYTH reported Tweeddale and Pirie, litsters in Edinburgh, against the other litsters incorporated with the walkers and bonnetmakers. The Town-council of Edinburgh, on a recommendation from the Parliament 1681, granted a seal of cause to the litsters, uniting them with the bonnetmakers, and so giving them the privileges of one of the fourteen deaconries ; whereon they attempting to discharge thir pursuers from exercising their trade, they raised a declarator, ALLEGING,—They were in the actual exercise and possession of their trade at the time of the said erection, and so could not be prejudged nor debarred during their lives. ANSWERED,—The space of three months after the patent was limited for their incoming to be members ; which they having neglected, they ought not to be received now.

The Lords found, They being freemen before the seal of cause, they ought to be assumed yet, and that without trial or examination ; but not their prentices : And found, They might debar any who had taken on them to exerce this trade after the erecting of the said incorporation ; else seals of causes would signify nothing.

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1695 and 1696. VEITCH *against* CARLILE of BOYTACH and GORDON.

1695. *February 28.*—IN a competition between Veitch and Carlile of Boytach, it fell to be debated, How far this was a nullity in a decret, that it bore the defender was personally apprehended, and was holden as confessed ; and

now, after sixteen years, and after an adjudication led upon it, another creditor raises a reduction; and, calling for the grounds and warrants, he finds the execution to have been done at the defender's dwelling-house, and not personal, as the decret bore; and so craved to be preferred.

The Lords balanced long the inconveniencies on both hands: For, *1mo.* They considered, after so long a time, one is not able to produce the executions of his summons whereon a sentence followed; but, if he do, and there be found any nullity or disconformity with the decret, then it is upon his own peril. *2do.* The extractors ought to be cited, to answer either for their fraud or ignorance in giving forth a decret contrary to their warrants. *3tio.* That, in such cases, an execution, bearing he was personally apprehended, might be stolen out from these obscure persons, prevailed on by a little money, and a null and insufficient one put in its place. *4to.* That, if the defender compeared and proponed other defences in the adjudication following on that decret of constitution, and said nothing against the debt, nor craved to be reponed, that was a clear confession and homologation; and another creditor of his cannot, after so long a time, quarrel that decret. But, *5to.* It is of the highest importance if I once get out a decret which has no warrants nor foundation from the minutes, because I have assigned it to a third party, therefore, that it cannot be regulated nor controlled against me by the minutes; and there shall be no redress, but such a sham decret shall stand; and an extractor shall be master of the security and property of the subjects.

The Lords resolved to hear this case argued, and superseded to give answer till then.

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1696. *February 4.*—The Lords heard the cause between Veitch, Carlile of Boytach, and Gordon in Dumfries, mentioned 28th February 1695; and, having balanced the inconveniencies on both hands, they sustained the decret, holding Boytach as confessed; and repelled the nullity that it was extracted disconform to the warrant,—the second execution bearing expressly that he was not personally apprehended, but only at his dwelling-house, so that he could never, on that citation, be holden confessed; in respect, an adjudication being deduced on that decret, Boytach compeared therein, and craved a term to produce a progress, but craved not to be reponed to his oath; and that it was now, after many years, come into the person of a third party and a singular successor; and Boytach was now become bankrupt; and the party might very likely lose his debt if it came to his oath; and the first execution bore him to be personally apprehended. All which circumstances the Lords conjoined. But the Lords would have examined the clerk, extractor, and messenger, if they had been alive;—but it was represented they were all dead; and the Lords thought the clerks and extractors ought to be liable in damages in such cases, because of their malversation.

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1696. *February 5.* SIR PATRICK HOME, and his TENANTS in Coldingham, against JEAN HOME, Lady Plendergaist, and RENTON the Messenger.

WHITELAW reported Sir Patrick Home, and his Tenants in Coldingham,
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