

his wife told him she had paid this account in particular, neither had she any discharge of it; so the money destinate to pay George Stirling might have been applied another way. Yet the Lords considering it was not pursued within the three years, (as the Act of Parliament 1579 bears,) and that he did not confess it was resting owing, therefore they found his oath did not prove the debt; and assoilyied: for they thought gentlemen had little more security of the payment of most of their accounts than that they gave their ladies or servants money to pay them, and had their assurance it was so applied; and if this was insecure for artificers, they had a remedy, either to get their account subscribed within the three years, or else pursue within that time.

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1697. *November 23.* SIR DONALD BAYNE of TULLOCH *against* SIR ROBERT GORDON of GORDONSTOWN.

IN an improbation between Sir Donald Bayne of Tulloch, and Sir Robert Gordon of Gordonstoun, certification is craved against a bond dated in 1640, which had been the ground of an apprising, and whereof an extract was only produced, and, after search, the principal bond could not be found, as appeared from a testificate of the clerks, and which coincided with some of those years whereof the warrants were drowned at sea, coming from England in 1661. On the one hand, a bond may be forged, and, after registration, taken out again with a little money; and, if the extract be sufficient to satisfy the production in an improbation, there is a foundation laid to encourage all knavery. On the other hand, what can the lieges do more but give in their principal writs to the Register; and, if they be lost, either by casual accidents or the faults of the keeper, shall the party ingiver suffer for that?

The Lords, in this case, abstracted from the general point, which is of great moment; but inclined to refuse certification here, in regard the debt was old and much diligence led upon it, and never quarrelled till of late, which took off the suspicion of its being false. Yet, in regard it was alleged that the debtor had been charged with horning on this bond in his lifetime, which is yet a farther adminicle of its verity, they ordained the horning, before answer, to be produced, which would tend yet more to clear the affair. See certification refused against principal bonds, in a similar case, *20th November, 1666.*

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1697. *November 24.* ANDREW BOWMAN *against* KER of LITTLEDEAN.

ANDREW Bowman pursues Ker of Littledean for a sum contained in his father's bond, granted to one Cranston, to which debt Bowman has now right.

ALLEGED for Littledean,—That Cranston, in farther security and payment of this sum, got an assignation to a tack-duty payable by sundry tenants to Littledean, and offered to prove his intromission by virtue of the tack and assignation