

SIR ALEXANDER COCKBURN of LANTON'S CREDITORS Competing.

1700. *July 30.*—THE Lords having granted a commission to sundry of their own number to take a trial and probation of the true rental of the estate of Sir Alexander Cockburn of Lanton, in order to a roup and sale of it pursued by George Lockhart of Carnwath, and others, his Creditors :—Lanton, by a bill, craved a protection from the Lords, that he might be present at the executing the said commission, and taking the probation, none being able to demonstrate his manner of improvement of land so well as himself.

The Lords considered he had been lately imprisoned in the Tolbooth of Edinburgh, by Lady Mary Kennedy and others, and having made his escape that night the rabble broke up the prison on the 20th of June last, he must be reputed, in construction of law, as still a prisoner ; as also the Act of Parliament 1681, regulating protections, allows them only where they are necessarily adduced as parties or witnesses, so that this case fell not under the Act of Parliament ; therefore they found the desire of his bill, craving a protection, could not be granted.

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1701. *February 5.*—George Lockhart of Carnwath entered his protestation against the decret of the Lords, pronounced the end of July last, preferring Sir Thomas Moncrief and the Earl of Crawford's children their infeftment on Cockburn of Lanton's estate, to Carnwath's right.

This protest was accounted within the ten days after the *gravamen*, because it must be *tempus utile*, and not *continuum de die in diem*.

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1701. *February 11.*

I sat this week in the Outer-House, and so the observes are the fewer.

1701. *February 11.* JOHN WIGHTMAN *against* MARJORY MONCUR.

HALCRAIG reported John Wightman, merchant in Edinburgh, against Marjory Moncur. It was a pursuit for 533 guilders 19 stivers, contained in an accepted bill, but protested for not payment.

ALLEGED,—That it was accepted *causa data et non secuta*, seeing the drawer was to have paid the value to a merchant in Rotterdam, for goods received from him ; and, *ita est*, the drawer broke before the term of payment of the bill, without satisfying that factor ; and so she cannot be liable.

ANSWERED,—The bill is opposed, bearing for value received ; which being, by her acceptance, acknowledged by her, she can never pretend now the cause

of the bill not to have been implemented; and a bill bearing value received is a fungible, and like a bag of money, and no exception is competent against it.

REPLIED,—This were good among strangers; but this bill being made payable to the drawer's brother, the narrative can never prove *inter conjunctos*, but, by the Act of Parliament 1621, must be instructed *aliunde*.

DUPLIED,—The Act of Parliament takes no place in bills of exchange, which, for expedition of commerce, do, *fictione juris*, pass from hand to hand, like ready money, their currency being the life and foundation of trade.

The Lords considered that bills must not be fettered and clogged with municipal statutes, but must be regulated by the *jus gentium et lex mercatoria* received in the trading places of Europe; but thought, if it had borne only for value in account, they would have, in this case betwixt two brothers, caused him prove the onerous cause *aliunde*; at least to have given some probable evidences thereof, though not amounting to a full probation; as they did lately in the case of a bill of exchange, bearing for value to account, betwixt *Wightman* and *Cuthbertson*: But here, it bearing expressly value received, the Lords would put them to no farther proof for instruction of the onerous cause, unless they would convel and redargue the verity of that narrative by his oath. All the hazard is, Bankrupts, instead of granting bonds to their nearest relations, may now give them bills of exchange.

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1701. February 13. MARGARET POLLOCK *against* ROBERT SPREULL.

MARGARET Pollock, as executor to John Spreull her husband, pursues Robert Spreull, in Drumgrain, for 100 merks contained in his bond.

ALLEGED,—The bond was conditional, and not payable till he attained the age of twenty-one years complete: and she replying, that he was past his minority before his death, and this being admitted to her probation, she adduced two witnesses, who deponed, That they saw him at Bothwell Bridge in June 1679, and though they knew not precisely his age, yet he was then between a lad and a man. And, for his death, she produced his testament, confirmed in 1697, bearing that he had deceased in 1695.

This probation coming to be advised, it was CONTENTED for the widow,---That the witnesses' conjecture of his age in 1679, as being then betwixt a lad and a man, must be fixed at his *plena pubertas* of eighteen; and so, in 1682, he was twenty-one; and from that year it must bear annualrent, conform to the bond.

ANSWERED,---That was a very uncertain standard and measure; for some at twelve or fourteen will look more like a man than another of lesser growth at eighteen. And as to the assertion in the testament, that he died in 1695, that was no ways probative nor authentic; for it is known the Commissaries take no probation of the party's death, but insert it on the up-giver of the testament or inventory, their word. Yet the testament would prove that he was dead at the time it was offered to be confirmed.

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