

# APPENDIX

## PART I.

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## WRIT.

1776. February 25.

JAMES AFFLECK, in Law, against DAVID WILLIAMSON, Overseer of the Mine-works at Leadhills.

WILLIAMSON had been for several years employed in the service of Alexander Sherriff and Company, as overseer of their mining-works at Leadhills, and had, in that capacity, been in use of granting notes to the different workmen, obliging the Company to pay small sums of money to the workmen at the distance of six months, which served them as letters of credit with the country people, for the purchase of their winter beef, and other necessaries, and which, when paid, were retained out of the wages of those workmen who had received them. James Affleck, a dealer in cattle, who lived in the neighbourhood of the mines, received some of these notes, amounting in whole to £7 Sterling, in payment of the cattle which he had sold, which were of the following tenor: 'Leadhills, 21st October 1773, No. 5. Against April first to come, Alexander Sherriff, Esq. of Craigleath, and Company, promise to pay to John Macquat Smith, or bearer, £3 Sterling.'

'DA. WILLIAMSON.'

Mr. Sherriff having failed before these lines became payable, Affleck brought an action before the Sheriff of the county against Williamson for payment of their amount. The Sheriff decerned against him, and the cause was brought by advocation before the Court of Session. The Lord Ordinary (Covington) pronounced an interlocutor, remitting the cause *simpliciter* to the Sheriff.

No. 1.  
How far an overseer subscribing a note for the Company who employ him, without mentioning *by procuracion*, is personally liable for such subscription.

No. 1. Williamson, in a petition to the Court, pleaded,

That such lines as these had always been granted at the leadmines by the overseers for the different companies working there, and that it was universally understood, that these lines were no more than certificates or letters of credit, by which these companies denote, that the workmen to whom they were granted, had credit with them to that extent; on which credit, accordingly, the notes alone circulated, and that it never was understood any person but the Company, for whose behoof they were granted, and on whose credit alone they circulated, was liable for the payment of them. That the overseer who subscribes these notes, was never understood to be liable for their payment, because, as expressed in a certificate signed by eleven of the principal tacksmen and overseers of these works, 'the overseer is understood to sign them as the servant of the Company, and not for his own account, nor upon his own private credit.'

It was answered: That as Williamson had granted these notes without specifying he did so by procuration, he rendered himself liable for the payment of them: That so far from the notes being only current on the credit of the Company, the persons who composed that Company were not even known to the holders of these notes. Certainly the pursuer had no reason to think that Williamson was not bound, as he had adhibited his subscription to the note, which, even by the most simple and ignorant, is always understood as inferring an obligation upon the person so subscribing to pay the contents. And if it were established, that one person might draw a promissory-note in behalf of another, without necessarily interposing his own credit for the performance, or specifying that he acts by procuration, a wide door would be open to fraud, and uncertainty introduced in all mercantile transactions; but it has been always understood, that the rights of third parties can never depend upon the private situation or transactions of others, and therefore, notwithstanding that Williamson had only granted these notes in the usual manner as overseer, yet that he must be liable for payment of them when in the hands of a third party.

The Court, proceeding principally upon the universal practice at the Lead-hills, altered the interlocutor of the Lord Ordinary, who had affirmed the decision of the Sheriff, and found, that Williamson was not personally bound.

*Lord Ordinary, Cowington.*

*Act. Maconochie.*

*Alt. Alex. Murray.*

**D. C.**

1801. *January 22.*

**ANNE INGRAM and Others, against MARY STEINSON and Others.**

**No. 2.**  
Objection to  
a testament,  
that the in-

**WILLIAM ELLIS** executed a testament, in which he appointed **James Ross**, **James Steinson**, and **Mary Steinson** his wife, his executors; and, among other