

The persons, therefore, employed in effectuating their designs, are understood to receive an authority from each of those who have at any time concurred in the proceedings; nor can it be allowed to an individual, under pretence merely of his absence at a particular period, to shake himself loose, on an unsuccessful termination of the enterprise, from his obligation. For, in those cases, *Qui tacet, consentire videtur*; and *Qui vult quod antecedit, non debet nolle quod consequitur*; 20th July 1725, Campbell *contra* Creditors of the Equivalent, No 3. p. 9276.

No 273.

The Court considered Mr Arnot's acquiescence to be equivalent to a mandate; and therefore repelled the defences.

Reporter, Lord Swinton. Act. Elphinston. Alt. Dean of Faculty. Clerk, Sinclair.
Œ. Fol. Dic. v. 4. p. 128. Fac. Col. No 275. p. 423.

SECT. III.

Qui tacet consentire videtur.

1662. June 24. HAY against HUME of Blackburn.

ROBERT HAY, tailor, pursues Hume of Blackburn, as representing his father upon all the passive titles, to pay a debt of his father's. The defender *alleged*, Absolvitor, because there was nothing produced to instruct the debt, but an extract out of the register, bearing the bond to have been registered by his father's consent; whereas it is notour and acknowledged by the summons, that his father was dead long before the date of the registration. The pursuer *answered*, The extract is sufficient to instruct the verity of the bond, being in a public register of the session; albeit the defunct was dead the time of the registration, which might have been the creditors' mistake, and cannot prejudge them, seeing *vita præsumitur*, especially now, when through the loss of the registers, principal writs cannot be gotten. The defender opposed his defence, and the decisions of the LORDS, lately, in the like case, concerning the Earl of Errol, because nothing can instruct against any man, but either a writ subscribed by him, or the sentence of a judge upon citation or consent, and this is neither.

THE LORDS refused the extract simply, but ordained the pursuer to condescend upon adminicles for instructing thereof, either by writ or witnesses, who saw the bond, &c.

No 274.

Extract of a bond registered, found not to instruct or prove against those who consented not.