

That it was an undelivered evident, lying 38 years in Porterfield of Deuchal the writer's hands, and produced by him in an exhibition. ANSWERED,—It was a mutual contract, whereof there is only one double, and so neither could, nor needed to be delivered. REPLIED,—It bore registration, and so each might have got an extract; and it might have been made public by a process.

Next, ALLEGED,—It contained a *synallagma*; and Captain Cunninghame not having fulfilled his part, the Earl was not bound; *qui agit ex contractu reciproco debet prius docere omnia ex sua parte esse impleta*. ANSWERED,—Captain Cunningham's part was only the delivery of writs, and the minute in the end of it bears that he gave up a back-bond to the Earl.

REPLIED,—That cannot be the evidents meant in the first clause, which is conceived in the terms of a future obligation; and he either had such writs, or he had them not: if he had them, then he did not fulfil by delivering them; if he had them not, *dolus dedit causam contractui*.

The Lords, after a debate in presence, found Captain Cunningham's heirs could not seek implement of this minute of contract, in regard they had not performed their own part of it. Against this, a bill was given in, and refused.

Then Glencairn's oath was craved, if he had not those papers; and being offered, they resiled; so the Lords decerned.

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1685 and 1687. CAPTAIN JOHN ANDERSON *against* ANDERSON of DOWHILL and LECKY.

1685. December 3.—CAPTAIN John Anderson, in Glasgow, against Anderson of Dowhill, and Lecky. The Lords, having heard their mutual bills and answers, ordained Saline, who is auditor in the process pursued by Captain Anderson, to be likewise auditor in the other process raised since against him by Lecky and Dowhill, which was tabled before Harcus, to the effect, for avoiding confusion, and the interfering of two Lords, both parties may insist before him as they think fit, and make use each of them of their own clerk, in their respective actions; for this was a competition for two Lords, and two clerks: and ordained Anderson of Dowhill to answer that part of the bill, against tomorrow, of exhibiting the count-books, and anent his deponing about his making use of, or taking assignations to, retired bonds not purged by himself singly, but by the stock of the society.

This cause, upon report of Saline, was further decided on the 9th December; and the Lords found, seeing Dowhill was manager and book-keeper of the copartnery of the ship called the Providence, though the other partners had signed an account acknowledging a balance of £29,000 to be due to him, yet seeing it did not mention that the instructions of the articles on the debit side were shown to, and seen by them; therefore they ordained Dowhill to produce the journal and ledger-books, and such instructions as he had of the copartnery, with his accounts, upon oath; and remitted to the Lord Reporter to take his oath thereon, and on such interrogatories as he finds pertinent.

Dowhill reclaimed against this, as tending to propale his private fortune; and offered to show them to two merchants, but not to Captain Anderson.

The answer is, he was book-keeper, and so his accounts are *instrumentum commune* to all in the society with him. *Vide* 2d February 1687.

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1687. *February 2.*—The case of Anderson of Dowhill and Captain Anderson, mentioned 3d December 1685, was advised. The Lords found Dowhill behoved to allow the cargo of sack in the fore end of the £29,000 of balance due to him by the partners of the ship called the Providence, when they last fitted their accounts. And, before answer to the rest, ordained probation to be led, if Dowhill alone had the keys of the cellar where the goods lay, or if the rest had access thereto, as well as he.

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1684 and 1687. The TOWN of EDINBURGH *against* The KING'S TRADESMEN.

1684. *March 20.*—The case of the King's Tradesmen, *viz.* Mr Miln, his mason; Callander, his smith, &c. against the Magistrates of Edinburgh, was reported by Redford; and the Lords find the 153d Act Parl. 1592, and the 275th Act 1597, and the other Acts and exemptions given to these tradesmen, can only liberate them from taxes and burdens imposed by the town by their own authority, or for their own use; as, for bringing in the water to the town by pipes, making highways between Leith, Edinburgh, and the Abbey, mending the streets, &c.; but that they cannot thereupon plead immunity from the King's stents and taxations; the Acts of Parliament imposing these bearing no exception of their privilege; and it is hard to give them now, seeing, *Imo*, These Acts were made when the King dwelt among us, and they were truly employed in his service; but now it is merely nominal, and they are titulars. *2do*, They are the best and richest in their several trades; and it were unequal to free them, and lay their proportions upon the poorer. *Vide* more of this, 24th February 1687.

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1687. *February 4.*—The case of John Hunter, the Town of Edinburgh's collector of their cess, against those called the King's Tradesmen, mentioned 20th March 1684, is again reported by Redford; and the Lords found the suspenders' privileges did not extend to the impositions laid on for his Majesty's use; and therefore found the letters orderly proceeded against them; and assoilyed the Town from their declarator as to that point; but find and declare them free from bygones preceding Martinmas last *ob probabilem fidem*. A bill being given in against assoilyeing them from bygones, seeing the late Acts did not exempt them; the Lords adhered to their former interlocutor, in regard they thought the Town's proportion of the bygone cess was already made up without their parts.

Then a bill was given in reclaiming against exeming Deacon Callander, smith, that he could not be free of bygones, because, by a writ under his hand, he had condescended to pay them.

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