male, and so disappoint the lineal female succession; which hath not yet existed, nor can be known till his decease.

REPLIED for the pursuer,—The true meaning of the bond was failing sons of the marriage, to pay 10000 merks to the daughters, one or more, which case existed so soon as the marriage dissolved, the dissolution whereof must be the term of payment. For had the payment of the sum been industriously delayed till after the father's death, some clause had been inserted importing so much, either expressly, or tacitly, by obliging only the father's heirs and not himself to pay, or by reserving his liferent. 2. The daughter had been very ill secured by the bond, if during the father's lifetime she could neither uplift the money, nor crave annual-rent nor any portion if married. Especially considering, that by the conception of the bond heirs only and not executors are bound, and the father might make all his estate moveable.

The Lords found the sum payable presently.

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1706. *February* 13. The DUTCHESS of HAMILTON *against* DANIEL CAMPBELL, Collector at Port-Glasgow.

IN the action mentioned *supra*, January 18, 1706, at the instance of Daniel Campbell, collector at Port-Glasgow, against Sir Alexander Anstruther, the Lords having found, that Mr. Campbell's letter did not empower Sir Alexander to enter into a minute of sale with the Dutchess; compearance was made for her Grace, who claimed the benefit of the clause in her favours in the said letter, viz. that she might have the bargain upon such a reasonable consideration as the Lords should modify.

ANSWERED for Daniel Campbell,—The clause in his letter, imports no concession or ground of claim in favours of her Grace, but only *verba officiosa*, a fair compliment at most, or velleity to treat with her if she were desirous; which obliged him to nothing, far less to dispone an heritable right without any treaty or agreement, at the Lords arbitrement. For the letter was not writ to the Dutchess, nor is it found to liberate Sir Alexander, to whom it was directed. And her Grace, not being bound to Mr. Campbell to accept of the bargain, it is inconceivable why he should be obliged to let her have it: and her now declaring her acceptance signifies nothing; for, if third parties should be allowed to catch at words passingly spoke betwixt others, all common converse would be dangerous and ensnaring. Yea, a letter declaring that the writer was not to pass from a certain verbal communing, was not found obligatory to cut off *locum penitentiæ*;—January 28, 1663.

REPLIED for the Dutchess,—Letters are as obligatory as other writs, to justify the receiver as to any thing that follows in consequence thereof;—January 3, 1677, Earl of Argyle against L. of M'Naughton. As for the decision 1663, it concerns not the case in hand; for there Brown's letter did only express his resolution to adhere to a verbal communing, which could not deprive him of his *locus penitentiæ*, seeing the bargain was to have been perfected in writ; where-

as no man will say but Mr. Campbell might pass from a perfected minute, by a line under his hand, in favours of a third party. It alters not the case, that the letter is directed to Sir Alexander, and not to the Dutchess; for a clause in a writ conceived in favours of an absent third party, is as much their right as if they were present. And Mr. Campbell's letter doth not appear to have been so overly writ as he now pretends; seeing he is careful that his yielding the bargain to her Grace should not be for nothing, but for a consideration, which implies something of more caution and deliberation than his new gloss will admit of.

The Lords found Daniel Campbell's letter did not oblige him to let the Dutchess have the bargain.

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1706. *June* 19. JOHN BINNING of Drumcorse *against* The WOOLLEN MANUFACTORY of Newmills, and the PROCURATOR-FISCAL of the Sheriff-Court of Linlithgow.

IN the process at the instance of John Binning of Drumcorse, against the Woollen Manufactory of Newmills, for reducing the Sheriff-depute of Linlithgow's decreet, confiscating some packs of wool belonging to John Binning, because of pregnant presumptions of a designed exportation, and his being holden as confest for declining to purge himself by oath,—the Lords reponed him to his oath; and upon his deponing that he had no formed design to export the wool, reduced the Sheriff's decreet. Whereupon the pursuer urged for restitution of the wool confiscated, and damages, from the masters of the manufactory who seized the wool, and the Sheriff's procurator-fiscal, who rouped and disposed thereof.

ANSWERED for the defenders,—All persons, by the Act of Parliament, being encouraged to discover exporters of wool, and to pursue the confiscation, and to have the two part for their reward, and the procurator-fiscal the third; and the defenders having, upon the faith of the sentence of confiscation, *bona fide* consumed what they acquired thereby, they cannot be liable in repetition of the wool confiscated, as being the fruits and perquisites of their office *bona fide percepti et consumpti*; and, at the furthest, could be only liable *in quantum locupletiores facti*, for the price they truly got for the wool, deducing the charges of the roup, and all their other expenses.

REPLIED for the pursuer,—The sentence of confiscation being reduced, restitution follows as a natural consequence. And though, in some cases, it may be contended that *fructus lucrantur*, by being *bona fide consumpti*, it was never imagined that the stock should follow the same fate.

The Lords found the defenders liable in repetition of the wool at the prime cost, deducing the expenses of the roup; and assoilyied from damages.

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