

the diligences he had done for recovery of those debts contained in the factory, and that his acceptance of the instructions should be but prejudice to him to make the charger liable for such of those debts contained in the factory as might have been recovered by diligences. But the answer to this was, that the very title calls them bad and desperate debts; and that this being debated, the Lords took no notice thereof. They also granted a commission to Rowen, to examine witnesses, if Mr Scoular was sole cash-keeper: against which it was objected, that though it fell under the senses, and so was probable by witnesses, that he was cash-keeper; yet it did not that he was sole cash-keeper, because Mr Arnault might also have been cash-keeper. But it were absurd to suppose two.

Mr Hamilton grudged, that Arnault, Scoular's partner, had hooked them into a bargain at Rowen, to give £34,000 as his neat part and result of the effects, upon his assigning them to the whole count-books and annualrents of it; whereas many who are inserted in the count, denied the debts when they came to pursue them, and the Lords assoilyied them from the article of annualrents: so he was lesed by the transaction *ultra dimidium*: and if they would repone him, he offered Arnault the half of all. On the other hand, Arnault urged, that *transactio* was *finis litis*; and if the Lords would find the letters orderly proceeded, he would find caution to count for all thir grounds of compensation.

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1686. *March 30.* JAMES GRAHAME *against* JAQUES MELL.

BAILIE James Grahame, in Edinburgh, against Jaques Mell in Rowen, who had fled thence for the persecution; and, upon letters from James Grahame, inviting him here, and promising him all security and assurance, had come to Scotland; and yet getting him engaged in a submission, and a decret-arbitral, he was offering to distress his person thereon, though he had goods of his in his hands near to the value of 8000 livres, and the whole claim was but 10,000 livres.

The Lords ordained him to apply by suspension: and Bailie Grahame, by a bill to the Privy Council, pretending that he was about to flee, got a warrant to arrest him. They afterwards made some agreement. *Vol. I. Page 412.*

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1685 and 1686. AGNES NISBET *against* ISOBEL and ESTHER SMITH and their HUSBANDS.

1685. *February 21.*—AGNES Nisbet against Isobel and Esther Smiths, and Mr Alexander Bruntfield, and Scot, their husbands, is reported by Carse; and the Lords sustain process at the said Agnes the pursuer's instance. And also find, that the defenders having been silent for several years since the expiration of their respective pupillarities, so that they never did intent action for clearing their tutor-accounts, against Mr Alexander Heriot, their uncle, and late husband to the pursuer, till this process was raised against them by her; that therefore the pursuer must have payment of the debts now pursued for, without abiding the event of a count and reckoning anent her husband's in-