

The Lords took a middle course, and ordained him to find caution for what was instantly prestable by him, viz. for extending the disposition ; and for his entering to the possession of the lands, they ordained the present factor to continue and to be comptable to any who shall be found to have right to the rents in the event of discussing ; but they thought the debate running on the nullity of the minute, it was both their interests to have it summarily determined.

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1692. *November 17.* The COBLE-FISHERS on the Don *against* The HERITORS of the Cruives.

MERSINGTON reported the objections against the hability of the witnesses adduced at the visitation of the salmon-fishing on Don, made by the coble fishers against the heritors of the cruives, viz. against Dr. Middleton, that he was son-in-law to James Gordon of Seton, who was a party that could tine and win in this cause, being an heritor of a coble. The Lords thought it hard to admit him, unless there was *penuria testium*, which would appear at advising. But their manner of fishing was not such a latent thing, as that there could be a penury for clearing it. *2do*, It was objected that the fishers could not be habile witnesses, because they were hired servants to the coble-heritors, and who could turn them off.

ANSWERED, they were not domestics, and they were common servants to the cruive-men, as well as to the coble-fishers, and were not constant servants, but only at set times of the year, and could no more be rejected than a mason, wright, or ditcher, employed by us.

The Lords found them legal witnesses, unless they dwelt on the lands belonging to the coble-men, and were not cottars, but removeable by them.

[See the subsequent part of the report of this case, *Dictionary*, p. 14287.]

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1692. *November 18.* LORD SALINE and ANDREW RULE *against* ALEXANDER BINEY *alias* GORDON.

UPON the mutual bills given in by my Lord Saline, and Mr. Andrew Rule, on the one part, and Alexander Biney *alias* Gordon on the other. The Lords ordained any writs lying beside the deceased Mr. Alexander Biney, advocate, belonging either to his brother Saline, or to my Lord Forrester, to be given up, on receipt, at the sight of Lord Anstruther who inventoried his charter-chest ; unless they be owing him money ; as also appointed the writs of the lands of Skelmore, &c. disposed by the said Mr. Alexander to the said Alexander Gordon, to be given up to him, and his father as his administrator, upon inventory, and obligation to re-deliver them in case Saline prevail in his reduction of this disposition *ex capite lecti*. And refused to sequestrate the rents *medio tempore* during the dependence of the reduction ; but allowed the party to whom they were disposed to continue

in the possession, they finding caution to refund *in eventu* to any who shall be found to have best right. *Vol. I. page 519.*

1692. *November 18.* IRELAND and MARTINE *against* THOMAS BEATON of Neither-tarbet.

BEATON being debtor by a bond, blank in the creditor's name, to one Hendry Bonsie, he acquires an assignation to an equivalent debt of Bonsie's, and thereon charges him with horning; he thereon fills up the name of one Ireland in Beaton's blank-bond; and Beaton being now charged by Ireland, he suspends on this reason, that Bonsie, to whom I gave that bond blank, and who filled up your name in it, was debtor to me before filling up of your name, and was charged at my instance; and so there being *a concursus debiti et crediti in eadem persona*, I must have compensation.

ANSWERED.—*Eo ipso* he had granted a blank-bond, he renounced compensation; and that Stair, *Tit.* Assignations, shewed that to be the design of granting them for the utility and dispatch of commerce. The Lords sustained Beaton's reason of suspension, founded on the compensation, he proving that he charged Bonsie, upon his bond, prior to the filling up of Ireland's name, by Bonsie in the blank-bond delivered by Beaton to Bonsie, or prior to the intimation of it, or prior to Ireland's showing Beaton that his name was filled up in his bond; Beaton likewise proving that Bonsie was bankrupt and insolvent at the time of his filling up Ireland's name in the blank-bond. For being then charged with horning at Beaton's instance, as he could not assign in prejudice of his diligence, so neither could he fill up Ireland's name to prejudge him of his compensation, contrary to the act of Parliament 1621, against fraudulent rights, and contrary to the *actio Pauliana* in the common law; seeing the filling up of the name was one equivalent transmission to an assignation.

For the like case, see *Stair*, 11th November, and 1st December, 1665, *Telfer*; and 27th February, 1668, *Henderson*; 19th December, 1676, and 17th January, 1677, *Grant*. *Vol. I. page 520.*

1692. *November 22.* SIR ALEXANDER COKBURN of Lanton *against* COKBURN of that Ilk.

SIR ALEXANDER COKBURN of Lanton having charged Cokburn of that Ilk for L.100 Scots, as his proportion of Lanton's commissioner-fees for Berwickshire to the Parliament; Cokburn craved compensation on sundry debts he had paid for him.

ANSWERED.—They were *debitum fundi*, and not to be compensated with personal debts. The Lords found it compensable, and ordained them to count and reckon. *Vol. I. page 520.*