

maills and duties. Beltrees, younger, finding his father overreached, he raises a reduction and improbation of the whole bonds which were the grounds of the adjudication; and Steill having produced them all but three, there is a certification extracted against these three, as false, for not production. And, as to the seventeen produced, Beltrees craved he might abide by the verity thereof, *sub periculo falsi*. And he compearing, refused to abide by fifteen of them, but only subscribed his abiding by two; whereupon young Beltrees extracted his decret of improbation as to these fifteen simply passed from, which extended to upwards of 25,000 merks: And, as to the remaining, he repeated his articles of falsehood, but so as they likewise dipped on the forgery of these fifteen passed from; in regard the darkness of the contrivance, and the length of time, had made the probation and discovery more difficult; yet vestiges enough still remained of the forgery, such as, he was under no necessity to purchase them, and knew old Beltrees was interdicted, and yet he would meddle. Next, they (though for considerable sums,) are all wrote on half sheets, and such as want the mark of the paper; by which, in the Earl of Haddington's time, when President of the Session, a forgery of a bond was discovered; and some of them being granted to his own tenants, were afterwards paid and allowed in their rents. And, as some sort of men had need of a good memory, so Mr Steill has been here caught in his own snare; for some of the bonds acknowledge receipt of the money from persons that were not then four years old, and others of them are dated on Sunday; and generally they bear dead witnesses, whereof one of them on his death-bed declared he was never adhibited a witness to any of Beltrees's bonds, above eight years ago, and yet they bore a much older date: besides they were all of one style, which evinced that one spirit actuated and informed the whole machine, and proved the contrivance came from one and the same hand: and though a late example was made on Hunter and Strachan, yet it was forgot, and persons were beginning that trade again.

The Lords thought his passing from the fifteen bonds did not free him from the *pœna falsi*, seeing he had made use of them in the manner above mentioned; and though he denied any accession, and alleged all he acted was with old Beltrees's consent, yet the Lords discharged the clerks to give up these bonds passed from, but ordered them to lie till the event, for giving farther light; and issued out a warrant to sheriffs, magistrates, and all other judges, to apprehend him, till he were tried, either before themselves or the criminal court.

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1709. December 1. MATTHEW ANDERSON *against* JOHN PATON.

THE deceased William Paton, merchant in Edinburgh, disposes his estate and effects to his father, burdening him with sundry legacies to his brethren and sisters, and particularly 7000 merks to his sister Elisabeth; and she being married to Ninian Anderson, who received 4500 merks, he pursues John Paton for the remaining 2500 merks, as he who represents his father, the trustee, by the fore-said disposition.

ALLEGED,—There was no obligation on the father to pay, but only to divide it amongst his bairns; and denies the money was uplifted, but still in the debt-

or's hands. ANSWERED,—Either it was actually intromitted with by him, or he ought to have done diligence for recovering thereof.

The Lords found it relevant, that the sums assigned were uplifted and intromitted with by the defender or his father, to make him personally liable for this debt ; and, failing thereof, found that Paton must assign Anderson to 2500 merks of these sums, with this special warrandice, that they are yet resting owing, unuplifted ; on which assignation ordain Anderson to discharge his claim : and, to discover what is intromitted with, and what not, ordained Paton to produce his father and brother's count-books. And the term being circumduced against him for not obtempering the interlocutor, he gave in a petition, showing he had produced these count-books in another process, betwixt Sir Samuel Maclellan and him, and they were borrowed up ; so he could not exhibit them without a special warrant.

The Lords stopped the circumduction, and ordered the reproduction of them in the clerk's hands.

Another question was started in this cause, *viz.* what kind of debts he should be assigned to : If he could crave the most sufficient and responsal of the whole list, or if they could offer him the refuse and desperate debts. It was thought neither of them were to be gratified in such an election, but, without picking, he ought to have a share of both. Which is agreeable to the common law, as Vinnius observes, *sect. 22 et 23, Institut. de Legat. Vol. II. Page 532.*

1709. December 6. DAME MARGARET LAUDER, Lady Pitmedden, against SIR ALEXANDER WEDDERBURN of BLACKNESS.

The lady, as executor to Mr William Lauder her father, having right to the fee of 4000 merks due by the town of Dundee, the liferent whereof belonged to Eupham Bathgate, relict of Mr Robert Lauder her uncle ; and £861 of it coming into the hands of Blackness, and arrested there, my Lady and her husband obtain a decret of forthcoming against him; decerning him to pay the money to them as fiars ; Eupham the liferentrix always renouncing her liferent in so far as concerned Blackness's obligation to pay her, upon my Lord Pitmedden's giving her sufficient security to make punctual payment to her of the annualrent thereof, during her lifetime, at two terms of the year, at her own lodging at Dundee. The relict being required to renounce on a new security, which seemed unquestionably good, that was offered her, she refused on this reason, That she could not be obliged in law to quit the security she had already for any equivalent in place of it, Blackness and she living in one town, and making payment to her in her own house ; whereas she behoved, in the other case, either to send to Edinburgh, or to have one there to receive it, which would be a great inconvenience to her ; whereas law had provided remedies in the case of payment, at a special particular place,—*tit. dig. De eo quod certo loco ; and sect. 31, Instit. de Act.*

ANSWERED for the Lady Pitmedden,—Whether the relict, liferentrix, consents or not, she, as fiar of the sum, has the *jus exigendi* and right to uplift the debt, on securing her interest, which was offered to be done by caution beyond exception, and she was no farther concerned. And the 226th Act 1594 allows