

1709. *January 4.*JOHN IRVING of Drumcoltran, *against* JOHN and ROBERT CORBETS, and Partners.

No 5.

Members of a Company decerned to relieve the keeper of the books and cash, *ante redditas rationes*, of certain sums of money borrowed by him for their and the Company's use, *ex eorum mandato*.

IN the process at the instance of John Irving against John and Robert Corbets and partners, for repayment of certain debts he had borrowed, by their warrant, for the use of the Company, while he was concerned in the management of their affairs,

Alleged for the defenders; The pursuer being both their factor and cash-keeper, he is obliged to count and reckon before he could seek any relief: Seeing *ante redditas rationes* he was presumed to have sufficient effects of theirs in his hands to answer all his disbursements.

Answered for the pursuer; It were unaccountable hardship to leave the pursuer to immediate distress for money borrowed by him *ex mandato* of the defenders, for their use, without relief till the issue of a count and reckoning, which may depend some years: And if mandates of this kind did not import a renouncing of any compensation or retention, upon the account of a society-debt, till accounts be stated and cleared, and a liquid balance in the mandatary's hand, no manager would ever engage his private credit for the Company.

THE LORDS repelled the defence, and decerned against the defenders for the sums commissioned by them to be borrowed by the pursuer; he always finding caution to pay what should be found due to them in the event of the count and reckoning.

Furbes, p. 297;

No 6.

An illiquid claim not sustainable either in compensation or in retention.

1735. *December 9.* CRAWFORD of Bridgend *against* HAMILTON of Grange.

A CHARGE upon a bond being suspended upon this ground of retention, that the suspender was confirmed executor to the charger's defunct spouse, and was entitled to her share of the moveables in the charger's possession; it was *answered*, That, by act 1592, cap. 143, liquid debts only are allowed to be pleaded upon by way of exception. The act speaks not of compensation more than of retention; and, as it is *triti juris*, then an illiquid claim cannot be offered in the way of compensation; to sustain it under the name of retention, would be truly giving it the whole effect it could have when pleaded as a compensation, which would be allowing the thing under another name.

THE LORDS repelled the reason of suspension.

Fol. Dic. v. 1. p. 159.