

for the whole. And Barneleugh being a singular successor, he can never be liable in the personal warrandice given by his author; for the true remedy was to have got an infestment of relief against the said feu-duty, which real warrandice would have defended against this pursuit; but that being neglected, ye have no recourse but only your personal warrandice against Kilpatrick the disponder's heirs: and his adjudication can never subject him to his author's personal warrandice, more than it can make him *passive* liable to fulfil and implement his deeds. And, as to the pretence that a master might as well seek relief from his tenant of what he pays to his superior, as a vassal to distress his sub-vassals beyond his *reddendo*, such remote parallels, which noway quadrate, serve only to darken and involve the case. For a master getting his rent and tack-duty has no more to crave; but a sub-feu, by the nature of feudal rights, stands really affected with the original *reddendo*, as *debitum fundi*, that may be exacted from any part of it.

The Lords differing in opinion anent this point, they ordained it to be heard in their own presence.

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1711. *June 27.* GEORGE WILSON of SANDS *against* GEORGE MACKENZIE.

WILSON against Mackenzie. Alexander Deuchar needing some money, and resolving to try the bank, he prevails with George Mackenzie, in August 1709, to draw a bill on him, payable to John Campbell, Deuchar's servant, for £60 sterling; which being presented to the bank, it seems they did not think the drawer's nor acceptor's security sufficient, and therefore refused the money. This made Deuchar to deal with George Wilson of Sands, to accept the bill conjunctly and severally with him, on which he gets the money; but the bank having protested the bill against Sands, he is forced to pay the money, and gets the treasurer's discharge on the back of the bill; and then raises a process against Mackenzie the drawer for repayment of the money to him.

ALLEGED,—I drew no bill upon you, but only upon Alexander Deuchar; and if the bank refused to honour it, Deuchar ought to have returned my bill, and put me in my own place again; and could not, with any honesty or fairness, apply to Wilson, to join with him in the acceptance without my knowledge or consent: whereas I never employed Wilson to join his credit to get the money from the bank: and Wilson was too rash to accept unless he had first consulted me; and if he did it to gratify Deuchar, and follow his faith, to him he must go for relief, seeing it is positively offered to be proven that Wilson's name is superadded in the direction, and when I signed the bill there was none named but Deuchar; and that it was so presented to the bank singly with his name, and was refused, till a few days after it was brought back again with Wilson's name, and then Deuchar got the money. And to evince that Wilson relied on Deuchar, he took an heritable bond for his relief, and is thereupon infest in his lands of Comry; and therefore he can never have regress against Mackenzie the drawer.

ANSWERED for Wilson,—That, by the very nature and conception of the bill, Mackenzie the drawer must be liable to repay him, because the bill has this

clause, that he had the value in his own hands, *ergo* he was debtor in the sum; which Mr Forbes, in his Tractate on Bills, page 53, thinks sufficient to afford the payer recourse against the drawer. And as for the direction, it must be presumed to have been *ab initio* as it now stands, unless you improve it; the subscription to the bill serving for both, and it not being customary to sign the direction. Next, the bill being designed as a fund for credit to Deuchar, whatever he did to make it effectual, by procuring Sands to concur with him in the acceptance, must bind the drawer who trusted him with negotiating of the bill. And you, the drawer, have no imaginable prejudice; for what if Deuchar had got the money at the first presenting, before Wilson or Sands accepted, you would have been liable to refund: or if Campbell had indorsed it to Wilson, and he had paid it, would not that have made Mackenzie the drawer effectually liable to repay it? What if he had accepted for the honour of the drawer? would that have evited the recourse, seeing I have voluntarily paid for you, *et utiliter negotium tuum gessi*, and so cannot, without ingratitude, be refused repetition? And his taking a bond of relief from Deuchar no more weakens his recourse against the drawer than a co-cautioner's taking a separate security from his conjunct cautioner can be construed a passing from the relief competent to him against the principal debtor; and on Mackenzie's paying him he is willing to assign him to Deuchar's security.

The Lords repelled Mackenzie's defence, in respect of the answer, and found him liable in repetition to Sands of the sum in the bill he has paid out for him to the bank.

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1711. June 30. SIR ROBERT SINCLAIR and SIR ARCHIBALD SINCLAIR'S CREDITORS  
against SIR ROBERT FORBES.

FORBES against Sinclair. King Charles II, by a patent in 1682, constituted the Duke of Lennox, his natural son, to be his Admiral of Scotland; reserving the liferent of the Duke of York, afterwards King James VII, who had a gift of it before. After King James's abdication, and the Revolution, King William named commissioners to manage the Scots Admiralty; and Sir Archibald Sinclair, advocate, was made Judge-Admiral during pleasure. In 1699 his affairs obliging him to retire for a while, he demits the office in favours of Sir Robert Forbes; who procures a new commission from King William, and grants a back-bond to Sir Robert Sinclair of Longformacus, for Sir Archibald's creditors' behoof, assigning to him the £100 sterling of salary annexed to that office, during the said Sir Archibald's lifetime and the said Sir Robert's enjoying the office jointly; by which Sir Robert Forbes restricted himself to the perquisites and emoluments of the place. King James having deceased in 1701, and so the commission of Admiralty ceasing, the Duke of Lennox's right began; and so both Sir Archibald's right and Sir Robert Forbes's came to a period; and Lennox having qualified himself by taking the oaths to Queen Anne, he is installed in the office, and names Mr James Graham as judge-admiral; but he, after a year or two, consents that Sir Robert Forbes get a joint commission with him: whereupon Sir Robert is re-admitted by a new gift, and possesses it for several years, till the circumstances of his affairs forced him to quit it. Upon this, Sir Robert Sin-