

Dutchess did not oppose the action, only craved, that the bond for L. 20,000 Sterling, granted and paid by her to her son, the pursuer, might be imputed *pro tanto* in satisfaction of his claim; and it was *pleaded* for her, That it never was intended my Lord Delorain should have both the bond and his father's personal estate; the bond was granted when my Lady Dutchess had no fund to answer it, other than this personal estate, having no power to charge it upon the entailed estate; and therefore, as the bond was plainly given in contemplation of the Dutchess having this subject, it being taken from her, the bond must fall to the ground as *sine causa*. It was *answered*, There is a great difference betwixt the cause of granting a bond, expressed in it, to make it effectual, and those by-views or motives which possibly may influence the granter, and even determine him to make the provision greater or lesser.—THE LORDS found the bond of provision, by the Dutchess to the Earl of Delorain, must impute at least *pro tanto*, in satisfaction of the claims for which the Dutchess, in virtue of the act rescissory, might be accountable to the Earl as executor to his father.

No 47.

Fol. Dic. v. 1. p. 428.

1724. February 5.

JOHN WATSON in Barmuir *against* JAMES FEDE in Fultoun.

FEDE having suspended a charge at Watson's instance, upon this ground, that the charger had signed a *supersedere* to him, of which the term was not elapsed; it was *answered* for Watson, That he had subscribed the *supersedere*, upon the faith that all the suspender's creditors were to do the same, which appeared, from the narrative of the writ, to have been the design; and since not above a fourth part of the creditors had signed, the charger could not be bound; for it was not to be thought that he could have tied up himself from doing diligence, and left the other creditors at freedom.

THE LORDS found, that the *supersedere* was intended to be signed by the whole persons narrated in the beginning thereof, and found it not binding on those who had signed, in respect a small number only, and not the whole, had signed.

Upon a reclaiming bill for the suspender, representing, that though the greatest number of his creditors had not signed, yet none of these had done any manner of diligence since the date of the *supersedere*,

THE LORDS adhered to their former interlocutor, with this quality, that the charger could not be the first user of personal diligence against the suspender.

Lord Reporter, *Forglen.* For the Charger, *Arch. Stewart, jun.* Alt. *Ja. Boswell.*
Clerk, *Mackenzie.*

Fol. Dic. v. 3. p. 300. Edgar, p. 21.

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No 48.

A supersedere was granted to a debtor by his creditor, upon the belief that the other creditors would concur. It was found to be not binding; the whole creditors not having concurred; but it was declared, that the granter of it could not be the first user of diligence against the debtor.