

stood upon the roll was safe, and every regulation for security of the constitution in that point would signify nothing: *Dissent*. Elchies *tantum*; President not judging.

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1751. June 4. WILLIAM WILSON *against* ———.

THE Lords found, that a nearest of kin having recovered a decret of constitution against a debtor of the defunct, and thereupon adjudged, but without confirmation, the adjudication was good, though objected to by the creditors of that debtor, as proceeding upon a decret of constitution that was null, being without confirmation.

*N.B.* Here the question was with the creditors of the debtor; but, *quære*, What would have been the law if the question had been with the creditors of the defunct, confirming this debt?

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1751. June 11. LORD DALMENIE *against* CRESSAU.

THE Earl of Roseberry having contracted considerable debts, and being proprietor of an entailed estate, his creditors got his estate sequestrated by the Lords of Session, who at the same time allowed him an aliment out of it of L.100 sterling a-year. Thereafter, Roseberry, having got a considerable accession to his fortune by the death of the late Lord Primrose, lived extravagantly, and in the space of some months, over and above his aliment, spent betwixt L.700 and L.800 sterling, for which he granted three bonds to Cressau, the defender: two of these bonds were supported by accounts produced by the pursuer and recovered out of the hands of Lord Roseberry, by which it appeared that these bonds were made up partly of money advanced and partly of furnishings to my Lord's profusion, several of which furnishings were charged much above the real value. It appeared further, by parole evidence, that Cressau had no intention to deal with my Lord, but that he was forced in some manner thereto, partly by the violence of Lord Roseberry and partly by the sollicitation of his wife; also that he kept accounts of these furnishings, though no regular books, which accounts my Lord examined carefully, and made alterations in them before he signed the bonds, and had them delivered up to him. The witnesses also proved the furnishings, as far as the nature of the thing would admit; as also they proved that Roseberry was very cunning, and much more apt to deceive than to be deceived. Of these three bonds,—two of them supported by the accounts foresaid, the third resting wholly upon the parole evidence first mentioned,—Lord Dalmenie, having bound himself to pay all Roseberry's debts, so far as they were just and lawful, brought a reduction upon