

1783. June 18. JOSEPH CAUVIN, *against* DR JOSEPH ROBERTSON.

DR ROBERTSON rented a house belonging to Louis Cauvin, who was debtor by bill to a company of which Dr Robertson was a partner; and who likewise owed a debt to the Doctor individually. Louis Cauvin died insolvent, and his son Joseph Cauvin entered heir to him *cum beneficio inventarii*. Dr Robertson who had paid to Louis Cauvin the rents due during his lifetime, continued to possess the house several years after his death, and in the mean time took an indorsation to himself alone of the aforesaid bill.

Joseph Cauvin, the heir *cum beneficio*, having demanded payment of the rents for these last-mentioned years, the Doctor claimed retention, *first*, of the debt due by Louis Cauvin to him as an individual; and, *secondly*, of the contents of the bill indorsed to him after the latter had died insolvent.

The COURT seemed to be influenced by this consideration, that if the debtors of persons insolvent were to be permitted thus to avail themselves of assignments obtained from particular creditors, it would be easy to disappoint the remainder of them of that rateable and just payment of debt to which they are entitled.

THE LORD ORDINARY had 'found Dr Robertson not entitled to retention of either debt.'

THE COURT altered his Lordship's interlocutor, so far as to find Dr Robertson entitled to retention of the debt originally due to him as an individual; while they adhered to it with regard to the bill indorsed after the bankruptcy. See SOCIETY.

Lord Ordinary, *Alva*. Act: *Cha. Hay*. Alt. *Nairne*. Clerk, *Colquhoun*.
Fol. Dic. v. 3. p. 145. Fac. Col. No 107. p. 170.

1793. July 8.

The TRUSTEES for the CREDITORS of WILLIAM BOGLE *against* JOHN BALLANTYNE.

IN the year 1777, William Bogle, Thomas Blane, John Ballantyne, William Wilson and William Ballantyne, engaged in a joint adventure, under the firm of Ballantyne, Wilson, and Company, for the purpose of exporting goods to New York.

By their agreement, it was provided, that if any of the partners died, or became insolvent, before the sale of the goods, their heirs or creditors should draw out, without either profit or loss, the sums which such partner had advanced.

The affairs of William Bogle having gone into disorder, he, in the year 1778, disposed his estate to trustees for his creditors.

No 39.

The tenant of a house, belonging to a person who became bankrupt, found entitled to retain the rents, in payment of a debt due to himself, but not in payment of a bill due by the bankrupt to a company, of which the tenant was a partner, indorsed to him after the bankruptcy.

No 40.

Two surviving and solvent partners of a dissolved company being sued for payment of a company-debt, at the instance of trustees for the creditors of a bankrupt to whom it was due, it was found competent for