

The great solicitations used by the pursuer, and the disadvantage Hayston lay under in common repute, furthered much this cause.

Advocates' MS. No. 421, folio 226.

1673. *November.* PALLAT, STEWART, GRAHAM, and MAXWELL of Pollock, competing.

IN a triple pointing between Pallat, Stewart, Graham, and Maxwell of Pollock, in which a man being at the horn, and assigning a bond to his creditor, and who, in right of the assignation, having uplifted the money from his debtor's debtor; the donatar to the cedent's escheat contends, that, *condictione indebiti*, he may repeat from the rebel's creditor what was so paid him, as *indebite et injuste solutum*, and assigned by him who had no power, and whose goods *fisco domini regis per ejus rebellionem erant acquisita*.*

The Lords found, one at the horn could not assign, though it were in satisfaction to a lawful creditor whose debt was contracted *ante rebellionem*; but where the creditor, who was the rebel's assignee, has recovered payment before citation or interruption, they found that purged the vitiosity so far, as it could not be condicted by the donatar to the escheat; *Lege 10. D. Quæ in fraudem creditorum*.

This last part of the interlocutor seemed strange, how the numeration and solution could be of that energy and efficacy as to impede repetition, *et tractu temporis validate that quod ab initio non substiterat, contra regulam Catonianam*; unless we say, *multa fieri non debent quæ facta tamen valent: item*, after fungibles *quæ numero, pondere, et mensura constant*, as money, &c. are paid, *non amplius origo inspicitur. L. 7. C. Si certum petatur*.—M'Keinzie's Pleadings, p. 106. *Vide supra*, No. 156. Helen Hamilton *against* William Bell, 25th February, 1671; and 385. [Sir James Ramsay *v.* Robertson, February, 1673,] which seems somewhat contrary. *Infra*, num. 478. §. 2. [The Relict of Littlejohn *against* the Children, 17th June, 1676;] *infra*, No. 711, Deans and Purves, 18th January, 1678.

Vide Andreas Gaill, lib. 2. *Observatio 25, numero ultimo*.—See this debate and competition, between Veitch and Pallat, at much length elsewhere.

Advocates' MS. No. 422, folio 227.

1673. *11th November.* PATRICK HOME *against* GEORGE CRAW.

MR PATRICK HOME, advocate, as having right, by translation, from Mr Hary Home, commissary of Lauder, who was donatar constituted by Sir Jo. Home of Renton, late Justice-Clerk, superior of the lands of Netherbyres, holden of his barony of Fleemington, of the liferent escheat of George Craw of Netherbyres, pursues a declarator thereof.

* See Hadington's Decisions, 26th February, 1612, Johnston; *item*, folio 91, Tarbet; *item*, folio 94. Tweedie.