

singular successor to John Watt : neither could his right fall within the Act of Parliament, he having taken the same for a most onerous cause, *viz.* for alimending the Lord Sinclair, and furnishing him money upon his necessary occasions ; which accordingly he had performed by alimending him, and debursing money for him, upon many pressing occasions, to physicians, and for his funeral ; which were just causes of Hermistoun's granting of that bond of annuity, to whom, and to whose heirs, he had disposed the fee of his estate, by contract of marriage, as said is ; and the Earl of Southesk, being only a creditor, as having the Lord Sinclair's only bond as cautioner to him for the Earl of Caithness's debt, for which the Earl of Seaforth was likewise bound, he might recover payment *aliunde* ; and his inhibition could not hinder the Lord Sinclair, or Piltoun, to take security for an aliment, which *bona fide* was paid by Piltoun yearly before ever Hermistoun's rents were affected by any diligence, either at Southesk's instance, or any other creditor of the Lord Sinclair's or Hermistoun's. *2do.* The rents of Hermistoun's estates, belonging to the King by his annual rebellion, Piltoun had obtained the gift thereof, upon that special reason and consideration, that he had alimended, and was bound to aliment, the Lord Sinclair during lifetime ; and, by virtue thereof, as the King's donatar, ought to be preferred to all creditors ; likeas he had already obtained decret upon these grounds, notwithstanding of any declaration of trust being qualified, as said is, against the creditor compearing *in foro contentiosissimo*.

The Lords, having much debated upon the first reason of Piltoun's, if it did fall within the Act of Parliament, upon that consideration, that the time of his assignation, and the time of the renewing the bond, he was no true creditor for any sums of money advanced by him either to Hermistoun or the Lord Sinclair ; and that, albeit he was chosen as a confidential person by the Lord Sinclair, as being of near relation, yet, *per tractum temporis*, he making truly payment of that yearly annuity, he was a true and lawful creditor after payment ; as likewise, considering that it might be of a dangerous consequence to sustain latent and private rights, which could not be known to any lawful creditor, who did advance sums of money in contemplation of a visible estate in the person of the common debtor, they gave not sentence upon that debate : but were all clear to prefer Piltoun upon that title, that he was donatar to Hermistoun's escheat ; and that his gift was expressly given for my Lord Sinclair's aliment, which he had undertaken, and so had undoubted right, as the king's donatar ; but the first point, founded upon the Act of Parliament, as having great difficulties, was no ground of the decret.

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1674. December 1<sup>r</sup>. JAMES GUTHRIE *against* HENRY GUTHRIE.

JAMES Guthrie, pursuing Henry for the price of some merchant-ware, delivered to him *anno* 1660, extending to a blank sum. It was ALLEGED for the defender, that he ought to have compensation of the £300 ; because, by a ticket subscribed by the pursuer, he grants the receipt of the said sum from the defender ; and obliged himself to deliver the same to the defender's father ; and, in the meantime, to pay annualrent therefor.

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It was REPLIED, That that ticket being only an obligation *ad præstandum*, and to deliver to a third party a sum of money, could be no ground of compensation competent to the defender, who had no right to that sum, but only the executors of the father; likeas the defender was content to make faith, that, as he received the sum, so he did truly deliver the same to the father, conform to the ticket.

The Lords did sustain the compensation founded upon the ticket, notwithstanding of the reply; and found, That the receipt of the money being instructed *scripto*, and bearing an obligation to pay annualrent, was obligatory against the subscriber, unless he could produce a receipt under the father's hand, to whom it was payable. And as to the father's executors, they did not compear; and if they should compear, they could pretend no right, unless that they would instruct that the defender was debtor to the father in that sum; otherwise, if his father had granted receipt conform to the ticket, his executors would be liable to the defender for payment or redelivery thereof: The want of the receipt being the pursuer's fault, his offering to make faith that he did truly deliver the same, did not exoner him, who was obliged, by writ, to deliver, and could not be taken away but by a written receipt of the father.

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1674. December 16. CAPTAIN GORDON and his OWNERS against CORNELIUS JANSONSKIE, Skipper of the Wine-Grape.

IN a reduction of a decret, pronounced by the Admiral-depute, for assoilyeing the ship called the Wine-Grape, as not being lawful prize, but did truly belong to Swedish subjects, upon these reasons, That, *first*, the passes and documents found aboard the ship were false, and not conform to the *formula* required by the Swedish treaty; in so far as, that the skipper, having been born a Hollander, and the most part of the company being Hollanders, there was found aboard of his ship a pass, bearing, that the skipper did compear and make faith that the ship and loading belong to Swedish subjects; whereas, being examined upon oath, he did acknowledge, that he was neither present nor made faith when that pass was granted and subscribed by the College of Commerce; likeas, several of the company being examined, did depon contrary to the skipper's deposition, *viz.* that a part of the ship did belong to Abraham Cranstoun, as owner of the half thereof; whereas the skipper had deponed that the ship did belong to one Abraham Volters; and thereby concluded, that, by his Majesty's express instructions, the pass, being simulate and false, was *per se* relevant to condemn the ship as lawful prize. The *second* reason was, that the ship was built in Holland, and, since the war, navigated by the skipper, who was a Hollander, and did contribute to the wars against the King; and did bear scot and lot with the Holland subjects, and that the most part of the company were Hollanders.

It being ANSWERED, That the admiral's decret could not be reduced upon these grounds; because, albeit the ship was built in Holland, and the skipper a Hollander, yet they offered to prove *quod mutavit domicilium*, and had become a true Swedish subject before the capture, by bringing his wife and family there.