

1687. *Feb. 25; July 15; Nov. 9; Nov. 25.*—1688. *Jan. 13; Feb. 28; July 17.*—1692. *Dec. 16.* JOHN CALDWALL'S RELICT and CHILDREN, and CHRISTIAN BOYD, Relict of Peter Gemmill, *against* FREDERICK HAMILTON and JOHN CUMMING.

*February 25, 1687.*—The case of John Caldwell's relict, and children, against Frederick Hamilton and John Cumming, in Glasgow, was reported by Balcasky. The Lords found, by the fitted account produced, that John Caldwell, the pursuer's father, left the Society of the Easter Sugar-manufactory, *in anno* 1683, and that the pursuers are not now obliged to accept their share of the instruments and materials of the said Sugary, nor of the houses, in regard of the valuation of the same by order of the Privy Council, and that the instruments and materials have been made use of by the defenders since that time; and this, notwithstanding of the several evidences adduced to instruct that he acted as a partner since 1683, and so remained *in communione*.

A bill having been given in against this by the defenders, the Lords adhered to their former interlocutor; but found the defenders liable only *pro rata*, and not *in solidum*; and ordained the former valuator to depone that the valuation made by them was just and true; and assigned the 1st of June for that effect.

Another petition having been given in by Christian Boyd, relict of Peter Gemmill, the fourth partner, the Lords declared the foresaid interlocutor should not prejudice her, but the matter should be entire *quoad* her part, in regard they had not now time to consider her special defences on the Privy Council's act of valuation, &c.

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*July 15.*—The case of widow Caldwell and her children, against Frederick Hamilton and John Cumming, mentioned 25th February 1687, being reported again by Balcasky, the Lords ordain the valuator to be re-examined upon this point, at how much they valued the house, instruments and materials, more than they could have been estimated for common use, in case the society had been then to be dissolved: And find whatever more the same were estimated at, ought to be deduced; and sustain the allegiances proponed for widow Gemmill, and assoillyie her; and supersede to give answer to that point, Whether their part of the stock shall bear annualrent from Caldwell's going out of the society, or if he must restrict to a share of the profit, till the report of the valuator's re-examination. Widow Caldwell gave in a bill against this, which was refused.

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*November 9.*—Caldwell's bairns, mentioned 15th July 1687, having given in a bill, craving that Hamilton and Cumming, the defenders, may be ordained to bring in the valuator upon their expenses. The Lords refused it, and appointed them to be brought in upon Caldwell's charges, because the re-valuation was of their seeking, and they would have benefit by it.

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*November 25.*—The case of Frederick Hamilton and John Cumming *contra* Christian Boyd, relict of Peter Gemill, and the Caldwalls, mentioned 9th November 1687, is again advised; and the Lords thought the valuation of the houses

and materials must be made, not in relation to the manufactory which is dissolved, but for common use ; and that the owners of the other sugary in Glasgow ought not to be valuator, as they were formerly, because it was their interest to ruin this other sugar-work, but allowed them to name others, each of them two ; and they once inclined to take the partners' oaths what they got for the syrups, but did it not. The interlocutor ran thus :—The Lords found that Mistress Gemill went out of the society upon the 30th day of July 1684 ; and found that she ought to have her share of the stock and profits of the manufactory, and of the house and materials thereof, with annualrent since that time ; and ordained a new valuation to be made of the house, and of the instruments and materials that are, and were extant the time of the former valuation, as they might be for common use ; and for that effect, that the valuator take the opinion of skilful tradesmen ; and appointed both parties to give in lists of persons to be named valuator, reserving to the Lords thereafter to determine the value, as they should find just. And, accordingly, lists were given in by either party ; and the Lords choosed five out of them, three to be a quorum.

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*January 13, 1688.*—The Lords, upon a bill of Frederick Hamilton's, in regard two of the six valuator, named *supra*, 25th November 1687, did make the commission to desert, on this pretence, that these words, ' of valuing for common use,' were ambiguous and unclear, therefore they ordained the other four to proceed without them.

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*Feb. 28.*—A bill having been given in by Frederick Hamilton, &c. mentioned 13th January, 1688, showing that the syrups and sugars would perish by the humidity of the room where they stood, and would be eaten by rats if they remained there till the advising of the cause in June ; and, therefore, craved liberty to roup them :

The Lords allowed them to be disposed upon on caution.

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*July 17.*—The Lords advised the report anent the sugar-manufactory at Glasgow, mentioned 13th January, 1688, and having compared the old valuation with the new, and considered the objections made by the two widows, Gemmill and Caldwell, against the last one, that none of their valuator concurred to it, they struck a medium betwixt the two, the last being 5000 merks cheaper than the old one ; in regard the materials were valued only for common use ; and so they divided the difference.

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*December 16, 1692.*—Christian Boid, relict of Peter Gemmill, against Frederick Hamilton, and John Cumming, mentioned 13th Jan. 1688. The Lords found she was obliged to take her lot and fourth share of the sugar manufactory, as the most equal way of division, on the dissolving of the society, notwithstanding of their taking up her husband's books of co-partnery from her at his death, and that she never accepted of her lot ; and that Cumming had lifted some of her share, even of such debts wherein he had no proportion himself ; but found that they behoved to be liable for their annualrent, of whatever they intromitted with of her lot, from the date of their uplifting it ; and that they must be liable to her for her

damage, if any of the debtors who fell to her lot turned bankrupt or insolvent, between the time of making the lots and their offering her share to her; because it behoved to be on their risk ay till it was offered or given to her.

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1692. *Nov. 23,* and *Dec. 20.* LORD GEORGE MURRAY *against* SIR ROBERT MILN of Barnton.

*Nov. 23.*—LIEUTENANT-COLONEL LORD GEORGE MURRAY pursuing Sir Robert Miln of Barnton, for counting to him as an assumed partner of the Customs, in 1681; and he seeking deduction of L.10,000 Sterling yearly, for two Managers, and of 10,000 merks yearly, as donatives given to the then Officers of State; and the rest of the partners refusing to allow them as most exorbitant; Sir Robert contended, that as to Charles Murray of Hadden, he could not quarrel them, seeing he consented. And as for Lieutenant-Colonel Murray, he had no interest to seek a modification, because Barnton had not assumed him, but that the only partner with whom he entered into contract was Hadden; and if Hadden did not assume the Lieutenant-Colonel, Barnton was not concerned, unless it had been intimated to him, and he had acquiesced. For *socii mei socius, non est meus socius*; and, therefore, whatever recourse the Lieutenant-Colonel has against Hadden, his constituent, who assumed him, yet he could not recur against Barnton.

The Lords found the Lieutenant-Colonel could only burden Hadden his assumer, and not Barnton, unless he assented to his in-bringing.

Then Barnton offered to prove by Hadden's oath that they agreed on the fore-said salary and donatives betwixt them; and though his oath could not prove against the Lieutenant-Colonel in other cases, yet here, because of the exuberant trust *inter socios*, it should be received.

The Lords found, that neither the party's oaths, nor their writ upon any transaction among themselves, prior to their assuming of partners, can prejudice the assumed persons of their recourse against their respective assumers for damage; else they might, by such private pactions, have evacuated all their profit, and yet had them liable to bear a part of the loss. But if these agreements had been signified to them before their assumption, and they had notwithstanding entered, then they behoved to have stood to them. Then the Lords proceeded to modify the manager's salaries, and by the oaths of Charles Charters and others, they found it exorbitant, and therefore restricted to L.500 Sterling for the whole. And as to the donatives, the Lords found they had grown considerably, from what was the custom in former years, and that it looked like corruption and bribery, and was given to the courtiers on design of getting an ease of their tack-duty, or the like; and thought it shameful that the Lords, by their decret, should own any such practice; therefore, they recommended to the President to try what was the perquisite payment in wine, by the tacksmen to every Officer of State, and to study to settle them.

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*Dec. 20.*—The Lords advised the debate between Sir Robert Miln, Charles Murray, and the other assumed tacksmen, (mentioned 23d Nov. last;) and the