

1694. *June 27.* MR DAVID FORBES, Advocate, *against* WILLIAM COCKBURN, Merchant.

MR David Forbes, advocate, as creditor to William Cockburn, merchant, offering to poind his shop ; his daughter compeared, and was content to depone that the goods were hers ; and the messenger going to proceed notwithstanding, the Lords, on a bill, stopped him till they heard the parties.

MR David ALLEGED, That this was only a palliation of fraud, and collusion ; the daughter being still *in familia*, and having no *peculium* nor stock of her own whereon to trade, but only her father's credit ; who would rather gift them to his daughter, who would always make the price forthcoming to him, than let them be poinded by the creditors.

The Lords, thinking the case suspicious, they ordained the pointing to go on ; but, in case she deponed, they allowed her the goods, she always finding sufficient caution to restore them, or the value, to Mr David, if he prove the property belonged to the father.

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1694. *June 28.* WILLIAM RUTHERFORD *against* MR JOHN GRIEVE of PINACLE.

CROCERIG reported William Rutherford against Mr John Grieve of Pinacle : who, being debtor to Rutherford in 700 merks, he gives him an assignation to one Gray's bond for that sum ; with this quality, that, in so far as he could not recover it, he should be liable to make it up himself. When Rutherford charges the Grays, they SUSPEND, upon partial payments, and produce discharges ; which is intimated to Grieve, and he takes up the discharges, and keeps them several years ; and, being now convened on the warrandice, he alleges they cannot recur against him, till they discuss Gray's suspension.

ANSWERED,—You are *in culpa et mora*, seeing you gave not back the receipts.

REPLIED,—You never required them ; and, if you had, I would have concurred with you, and instructed that they did not prove payment.

The Lords were clear, that such an assignee was bound, in the terms of the back-bond, to have insisted for the recovery of the debt assigned to him ; but, in regard of the circumstances, that he had taken up the receipts, and kept them several years, without furnishing Rutherford with defences against them, therefore, in this case, they found the cedent, and not the assignee, was bound to discuss the debt : and ordained Rutherford to retrocess Pinacle to the right of Gray's debt : and found the letters orderly proceeded against Pinacle for the 700 merks.

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1694. *June 28.* ROBERT CHAPMAN, in Kirkaldy, *against* THOMAS ROW.

THIS was a charge, on the Sheriff of Fyfe's decret, for 400 merks, conform to Chapman's obligation in a discharge. The reason of suspension and reduction was, That the obligation being relative to a clause, obliging him to pay all Doctor