

*CONDICTIO INDEBITI.*

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1735. February 14. THOMAS ROSS *against* M'CULLOCH.

No. 1.

*CONDICTIO INDEBITI* competent against an assignee, though he had two decreets, in respect it was reserved in the discharge.

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1745. June 25. EARL of PETERBORROW *against* MRS MURRAY.

No. 2.

HUGH SOMMERVELL, who was agent for this Earl of Peterborough, received from his factor L.50 sterling, and gave him receipt and obligation to hold account, but forgot to state it in his books on clearing the factor's accounts. The accounts were generally left in Mr Sommervell's hands till next clearance, and the vouchers retained by the Earl of Peterborough. After Mr Sommervell's death his succession devolved on the wives of Mr James Geddes and Mr Hugh Murray, and Lord Peterborough's accounts being drawn out from his books, wherein the L.50 was omitted. Lord Peterborough paid them the balance without confirming, and got up his writings and factor's accounts from which this L.50 was discovered; and now he sues Mr Geddes and his Lady, and Mrs Murray as representing her father for payment of the L.50, Mr Murray being dead and insolvent. Mr Geddes made no opposition; but for Mrs Murray it was alleged, that her father was not debtor, and she did not represent her husband; but in respect Mr Sommervell's receipt contained an obligation to hold account, and that Earl of Peterborough had paid Mr Murray *bona fide* upon the faith of the exactness of Mr Sommervell's books; therefore we repelled the defences, and found her liable. *Vide* Colonel Erskine *against* Earl of Lauderdale, No. 2, *voce* ANNUALRENT. (See DICT. No. 10. p. 2930.)

See NOTES.

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