

1786. *March 11.* ROBERT WILLIAMSON, *Petitioner.*

CESSIO BONORUM.

ROBERT Williamson insisted in an action of *cessio bonorum*, and was allowed to prove his losses : it was so late in the season before he obtained liberty to prove, that it became impossible for him to report his proof before the rising of the Court. With the concurrence of all his creditors, except Shaw, he petitioned to be set at liberty until the Summer Session. Shaw contended, that the negative of any one creditor was sufficient to prevent the *interim* liberation of the debtor ; and he said that he did not make this opposition wantonly, for that he had reason to believe that the debtor, or his friends, would rather clear that debt than suffer him to remain in prison. The Judges, however much they might disapprove of Shaw's measures, were under the necessity of admitting his *veto*.

Williamson again petitioned and set forth, that Shaw, having formerly failed in his circumstances, had conveyed all his effects, and particularly the debt in question, to his creditors, for their security ; and that those creditors concurred in consenting to the liberation sought for.

On the 11th March 1786, " The Lords granted the desire of the petition, in respect that Shaw, the opposing creditor, has only a contingent interest ; whereas his creditors, who do not oppose, have the direct interest in the debt in question ;" but they required Williamson to find security to return to prison, under a penalty equivalent to the whole debt.

For the petitioner, R. Cullen.

1786. *March 11.* ROBERT DONALDSON *against* SIR LUDOVIC GRANT.

MEMBER OF PARLIAMENT.

A trust-conveyance, for behoof of creditors, does not take away the right of voting at the election of a Member of Parliament.

[*Faculty Collection, IX. 418 ; Dictionary, 8689.*]

BRAXFIELD. The vote is good : my creditor's possession is mine :—such possession is an accountable one. As long as my estate is not sold, it is my property, and I may, when I please, denude the trustees by paying off the debt. A reverser is entitled to vote during the currency of the legal, because he may redeem when he pleases. The Act of Parliament has provided for this very case, by declaring, that no infertment for relief or payment shall have vote.

ESK GROVE. The right is in the debtor, although the creditor have power to sell.

On the 11th March 1786, "The Lords dismissed the complaint."
Act. A. Wight. *Alt.* A. Abercrombie.

N. B.—There was some doubt arising from the case of *M'Adam*, but the circumstances of that case were not distinctly explained.

1786. *June 21.* ROBERT HAY *against* ROBERT FULTON.

QUALIFIED OATH.

In what cases payment to a third party, at the desire of the creditor, is held to be an intrinsic quality.

[*Fac. Coll. IX.* 422; *Dict.* 13,220.]

ESK GROVE. Qualities natural to the constitution and extinction of obligations are intrinsic: so payment made by the intervention of a third party is intrinsic. This case goes farther: Fulton offers to prove, in consequence of his own oath, that he voluntarily paid a sum equivalent to his debt, to the creditor of his creditor. He ought to prove, by the pursuer's oath, that he received the money.

JUSTICE-CLERK. When a man swears directly *not resting owing*, the law will believe him; but here the defender does not deny the debt; he only says that he paid the money by order of the creditor.

On the 21st June 1786, "The Lords found that Robert Fulton has not brought sufficient evidence of his having paid the sum of L. 11:14:8 to Limeburner, in consequence of the pursuer's order;" adhering to the interlocutor of Lord Elliock.

Act. R. Cullen. *Alt.* Ed. M'Cormick.

1786. *June 22.* SIR ARCHIBALD EDMONSTONE, Bart. *against* WILLIAM LANG.

WRIT.

Such cautionary obligations only valid in which the statutory solemnities have been observed.

[*Faculty Collection, IX.* 427; *Dict.* 17,057.]

BRAXFIELD. It is a settled point that a cautionary obligation is a *litera-*