

Answered; That there could be no compensation betwixt an adjudication and a personal claim; and, besides, there was no *concursum crediti et debiti* between the same persons, as the bond belonged to his lady, who, not making up titles to the estate, was never debtor in the sum adjudged for.

THE LORD ORDINARY found, ' That the debt due to John Crichton by the Maclellans was not to be imputed towards the extinction of the adjudications, reserving to the Lady to recover that debt as accorded.

At advising a bill and answers, it occurred to some of the Lords, that it might make a difference, whether his adjudication for his Lady's portion, led against herself as apparent heir to her father, proceeded on a renunciation or a decret on the passive titles, for in that case she was debtor; but others thought if the decret had passed without a renunciation, this could not have been made use of against her to subject her to the debt, because her husband ought to have taken care that she should have renounced; and therefore it could not be urged in her favours.

THE LORDS, 7th June, adhered.

Pleaded in a reclaiming bill; That Alexander Ferguson of Isle had, upon debts due to him by Alexander Crichton of Crawfordtown, led an adjudication against John, his son and apparent heir, which proceeded on a decret on the passive titles, he having in this case neglected to renounce, which was acquired by Crowdieknows; and the bond recovered by him being originally granted to John Crichton, he had recovered so much of his proper debtor's effects, which behoved to impute as payment.

Upon answers, the LORDS, 12th July, found, that the debt due by the Maclellans to John Crichton was imputable in extinction of the debt due to Ferguson of Isle, and this day refused a bill, and adhered.

Att. W. Grant et Fergusson.

Act. A. Macdual.

Clerk, Kilpatrick.

D. Falconer, v. 1. p. 93, & 124.

1747. June 5. JAMES HALIBURTON *against* BLACKWOOD of Pitreavie.

SIR ROBERT BLACKWOOD of Pitreavie, William and Robert Blackwoods merchants in Edinburgh, granted bond for L. 2000 Scots to Birny of Broomhill, and William and Robert granted to Pitreavie a bond of relief.

James Haliburton, writer to the signet, paid Broomhill upon an assignation, and thereupon pursued Mr Robert Blackwood of Pitreavie, son to the granter, who *pleaded*, That money had been imprest into Mr Haliburton's hand to make the payment, by Robert Blackwood, then collector of the cess for the city of Edinburgh, co-obligant with Pitreavie, and from whom he had a bond of relief; that, therefore, the debt being extinguished by the debtor's money, it was wrong in Mr Haliburton to take an assignation thereto.

No 27.

A person having lodged with his friend an accepted bill, as a fund for raising money, and having got it from him, and paid a bond which he owed, on an assignation to himself, it

No 27.
 afterwards
 appearing the
 debtor did
 not use the
 fund of credit
 at that time,
 though he
 did it after-
 wards; it
 was found he
 could not use
 the assigna-
 tion against a
 cautioner, the
 bond being
 paid with the
 debtor's mo-
 ney.

Mr Haliburton being appointed to confess or deny, declared that he agreed with Robert Blackwood to borrow, on their bill, L. 180 Sterling, out of the Royal Bank, to pay Mr Birny, and that for his security he should take assignation to the bond; that, accordingly, on the 13th December 1735, he accepted and delivered to Robert Blackwood a bill, blank in the date, for L. 181 : 10s. who that same day gave him L. 172 : 11 : 6, which, with a note of Dalsersf's, for L. 10 odd shillings, he also that day paid to Broomhill, and got the assignation; that the bill to the bank was from time to time renewed, until that, 3d April 1737, they gave their joint bill for L. 121, which he paid 8th July 1738, extending, with interest and charges thereon, to L. 128 : 7 : 1-half pence, which was all he demanded.

Pleaded for Pitreavie; This account of the transaction appeared to be false; for, by the bank-books, Robert Blackwood got from the bank, 13th December, L. 230 on his cash-account, which besides appeared from his own general account of cash, wherein he had also made this entry, To Js. Haliburton L. 130; To ditto To pay my bond to Dr Birny L. 183 : 6 : 8.

The first borrowing by them was 18th December L. 145, also marked in Blackwood's private account of cash, which was executed by Blackwood's depositing in the bank a bill of Haliburton's to him, of the 13th, for L. 180, as a security for the principal then borrowed, and interest; but if this was the onerous cause of his taking the assignation, it was a fraud concerted between them to keep up the bond against Blackwood's cautioners after it was paid by the debtor's money; and, to effect this, Haliburton had granted a bill, which might, at any time, be given up, that, upon pretence thereof, he might say the money was his.

The money borrowed on this deposite was paid 10th August 1736, at which time no new bill was granted, as would have been the case if the debt had been continued, by renewing the security; but, on the 25th September, there was a new bill granted by them for L. 181 : 10s., renewed 3d April 1737 for L. 121, and paid by Haliburton 8th July 1738; but the distance of time, from the payment of the former borrowing, shewed this to have been a new contraction; and thus, it appeared, Mr Haliburton's account of the matter was not true, but the debt was really paid with Mr Blackwood's own money.

Pleaded for Mr Haliburton; That Mr Blackwood being prest for Birny's bond, applied to him for his assistance, and he gave him a bill for L. 180, payable 2d February 1736, to be a fund for raising the money; that the same day he got from him that sum, with the remaining odd money, which he paid to Mr Birny, and, as they had agreed, took an assignation to the bond; that it now, indeed, appeared Blackwood was able to raise the money without immediate assistance, as he did not make use of the credit afforded him till 18th December; but, at that time, it becoming necessary for him to replace the money he made use of, he raised it upon the deposite of Haliburton's bill, by borrow-

ing thereon L. 146 : 4 : 2, and having paid the same 10th August 1736, he, no doubt, got up his deposit ; but having still occasion for a further supply, retained it for that purpose ; that, 25th September, he got on Haliburton's security L. 130, for which they gave their joint bill, and did not deposite the former, as more than six months were elapsed from the date, and of this transaction there remained a holograph memorandum in a pocket-book of Blackwood's, viz. that they then accepted a bill for L. 181 : 10s. for which he had received L. 180 ; that, 8th April 1737, Blackwood made a partial payment ; and, taking up the old bill, they granted a new one for L. 121, which Haliburton paid 8th July 1738, amounting to L. 128.

This state of the case, which appeared from the bank accounts, did not, as was alleged, differ from the account given by Mr Haliburton, except that from memory he had said they jointly accepted a bill, whereas he had given his bill to Blackwood, who deposited the same, with a blank indorsation ; but, as the one was drawer, and the other acceptor, they were both bound to the bank, and it was properly their joint bill.

The bill then, which was as good as money, and on which Blackwood actually raised money, was a sufficient onerous cause for the assignation ; and, as Haliburton had since paid for it, or that which came in its place, he craved the benefit of his security to the extent of what he had disbursed.

Certificate by the Accountant to the Royal Bank.

1735.
Dec. 18. Royal Bank, lent Robert Blackwood, collector of the
cess in Edinburgh, *per* bill, payable at 60 days after
date, for L. 146 0 2
Per deposit of his bill on James Haliburton, writer to
the signet, dated 13th December, payable 2d Fe-
bruary, for L. 180.
1736.
Aug. 10. The above bill paid for L. 146 : 4 : 2.
1736.
Sept. 25. Ditto lent the said Robert Blackwood and James Hali-
burton, writer to the signet, *per* bill at ditto's date for 181 10 0
1737.
April 8. The above bill paid.
1737.
April 8. Ditto lent same two persons, payable at ditto's date 121 0 0
1738.
July 8. The above bill paid.

No 27. *Royal Bank, Edinburgh 7th February 1743.* That the above are taken from the books of the bank, is certified by

WILLIAM MITCHELL, *Accountant.*

Abstract from ROBERT BLACKWOOD, Merchant in Edinburgh, his Cash-Account with the Royal Bank.

| The Bank Debtor. | | The Bank Creditor. | |
|--------------------|--------|--------------------------|------------|
| 1735. | | 1735. | |
| Dec. 18. To L. 145 | L. 145 | Dec. 13. By my order for | |
| | o o | L. 130 | L. 130 o o |
| | | By ditto for L. 100 | 100 o o |
| | | | <hr/> |
| | | | L. 230 o o |

Abstract from ROBERT BLACKWOOD's Account of Receipts and Payments of Money the Mouth of December 1735.

| Receipts. | | Payments. | |
|---|---------|-------------------------------------|------------|
| 1735. | | 1735. | |
| Dec. 13. From the bank L. 230 | o o | Dec. 13. To James Haliburton | L. 130 o o |
| From Dalsarf in full of his bill | 10 15 3 | To ditto to pay my bond to Dr Birny | 183 6 8 |
| 16. From A. Blackwood | 13 o o | 16. To J. Haliburton 4os. | 2 o o |
| From ditto the L. 80 | | To the bank | 145 o o |
| per bill in full | 80 o o | 18. To the bank | 50 o o |
| From James Ramsay | 55 o o | To ditto | 145 o o |
| 18. From ditto | 50 o o | | |
| From the bank on James Haliburton's bill of | | | |
| L. 180 | 145 o o | | |

THE LORDS found, that the debt was paid with Robert Blackwood's own money, and therefore James Haliburton could not make use of the bond assigned to him against the cautioners, reserving to him action against the representatives of Robert Blackwood.

Act. *W. Grant.*

Alt. *Hamilton.*

Clerk, *Kirkpatrick.*

D. Falconer, v. I. No 18c. p. 241.