

1748. November 10. DAVID GIBSON *against* RICHARD MURRAY.

DOUGAL MURRAY, merchant in Inverary, had furnished goods to Colin Campbell of Kilberry, on account carried down to the year 1737; and having cleared with Captain Angus Campbell, Kilberry's curator and factor, adjected to the foot of the account a draught, 11th November 1739, for the balance, 'value due by Kilberry, as per above,' which Captain Campbell accepted; and Dougal Murray assigned it, 17th November 1745, to Sir Richard Murray, merchant in Edinburgh.

David Gibson, taylor in Inverary, creditor to Dougal Murray, had arrested the debt in Kilberry's hands, 1st June 1743; and a competition arising, the LORD ORDINARY, 19th February 1747, 'in respect the arrestments were laid on, not in Captain Campbell's hands, but in Campbell of Kilberry's, found these arrestments did not interpel the Captain from making payment of the sums due upon his bill.' And, 8th December, 'found the arrestments in Kilberry's hands could not compete with Sir Richard's assignation.'

*Pleaded* in a reclaiming bill, The debt was originally Kilberry's, and he continued debtor, notwithstanding the draught, which being subjoined to his account, bore to be for it, and was accepted by the Captain only as his factor and curator, who thereby did not bind himself, since a person contracting *factoris nomine* binds only his constituent; 17th February 1738, Ranken *contra* Mollison, *voce* FACTOR; but supposing him bound, Kilberry was likewise; so they were *correi debendi*; and arrestment in the hand of either must affect the debt.

*Answered*, The Captain was properly debtor; the title of the account was, 'Account Colin Campbell of Kilberry, by desire of Captain Angus Campbell;' so that his faith was followed, and he gave a security for his own debt. If Kilberry originally was liable, the taking the bill operated a discharge of the account; for which he could not afterwards be pursued. And it is evident the arrestment, when used, could not operate as in the hand of a *correus debendi*, from this, that, at granting the bill, the account was near prescribed; was never interrupted against Kilberry, and was actually prescribed *quoad* him when the arrestment was used.

THE LORDS preferred the arrester.

For the Arrester, *Jo. Campbell, sen.*

Alt. *Maitland.*

Clerk, *Gibson.*

*Fol. Dic. v. 3. p. 151. D. Falconer, v. 2. No 7. p. 8.*

No 26.

A curator accepted a bill for an account furnished to his minor, bearing for that value. The creditor assigned it. Prior to the assignation, an arrestment had been laid in the hands of the minor himself. The arrester was preferred.