

stood upon the roll was safe, and every regulation for security of the constitution in that point would signify nothing: *Dissent*. Elchies *tantum*; President not judging.

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1751. June 4. WILLIAM WILSON *against* ———.

THE Lords found, that a nearest of kin having recovered a decret of constitution against a debtor of the defunct, and thereupon adjudged, but without confirmation, the adjudication was good, though objected to by the creditors of that debtor, as proceeding upon a decret of constitution that was null, being without confirmation.

*N.B.* Here the question was with the creditors of the debtor; but, *quære*, What would have been the law if the question had been with the creditors of the defunct, confirming this debt?

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1751. June 11. LORD DALMENIE *against* CRESSAU.

THE Earl of Roseberry having contracted considerable debts, and being proprietor of an entailed estate, his creditors got his estate sequestrated by the Lords of Session, who at the same time allowed him an aliment out of it of L.100 sterling a-year. Thereafter, Roseberry, having got a considerable accession to his fortune by the death of the late Lord Primrose, lived extravagantly, and in the space of some months, over and above his aliment, spent betwixt L.700 and L.800 sterling, for which he granted three bonds to Cressau, the defender: two of these bonds were supported by accounts produced by the pursuer and recovered out of the hands of Lord Roseberry, by which it appeared that these bonds were made up partly of money advanced and partly of furnishings to my Lord's profusion, several of which furnishings were charged much above the real value. It appeared further, by parole evidence, that Cressau had no intention to deal with my Lord, but that he was forced in some manner thereto, partly by the violence of Lord Roseberry and partly by the solicitation of his wife; also that he kept accounts of these furnishings, though no regular books, which accounts my Lord examined carefully, and made alterations in them before he signed the bonds, and had them delivered up to him. The witnesses also proved the furnishings, as far as the nature of the thing would admit; as also they proved that Roseberry was very cunning, and much more apt to deceive than to be deceived. Of these three bonds,—two of them supported by the accounts foresaid, the third resting wholly upon the parole evidence first mentioned,—Lord Dalmenie, having bound himself to pay all Roseberry's debts, so far as they were just and lawful, brought a reduction upon

the head of fraud and imposition, and incapacity of Lord Roseberry to contract, on account of furiosity.

The Lords did not reduce the bonds *in totum*, but sustained the accounts so far as they were just and reasonable ; but so far as they were not just and reasonable, not only curtailed them, but also in the same proportion diminished the sums of money that made up the remainder of the two bonds to which the accounts referred, and in the same proportion, as by this means the two bonds should be diminished of which the accounts were produced, reduced the third bond, of which no account was produced, and remitted to an Ordinary to do accordingly.

1751. June 13.

STRAHAN *against* ———.

FOUND that tenants could have no allowance off a master on account of cess and levy-money forced from them by the rebels in the 1745. The Lords seemed to be clear in the general point ; but what made the doubt here was, that there seemed to be an agreement and consent on the part of the master to the tenants paying the levy-money and cess.

1751. June 19. MRS KENNEDY *against* MRS CAMPBELL.

[Elch. No. 7, *Proof*.]

THIS was a competition betwixt two ladies about a dead man, the late Campbell of Carrick, who in the year ——— granted a holograph certificate to Mrs Kennedy, the pursuer, certifying that he had married her such a day before two witnesses named, but not subscribing, at such a place. In consequence of this certificate it was not doubted but the *copula* had followed though they never publicly cohabited together. Some time after this he married clandestinely, without proclamation of banus, Mrs Campbell, the defender ; but at the same time he wrote a letter to the pursuer, acknowledging her for his wife still, and expressing the utmost sorrow for what he had done. However, he lived near twenty years thereafter publicly with his second wife, had children by her, and all this while the first wife made no complaint, (for certain prudential reasons, as was said, and for one obvious one, lest the man should have been hanged ;) but on the contrary behaved to Mrs Campbell as if she had been his wife. She now brings an action against Mrs Campbell to have her marriage declared. The Lords found at first, that by her silence for so long a time, and her acknowledgment of Mrs Campbell's marriage, she was barred *personali exceptione* ; but this decree the House of Peers reversed, as inconsistent with the sacred contract of marriage, and allowed Mrs Kennedy to prove the marriage. In consequence of which decree Mrs Kennedy insisted in the proof of her marriage before the Court of