

a subject of much importance; being as I imagined, the adjudication of a tack which might expire to-morrow.

On the 15th February 1770, "In respect that the missive relates to an heritable subject, the Lords found it not probative;" altering Lord Elliock's interlocutor.

Act. J. Boswell. *Alt.* A. Lockhart.

Diss. Kaimes, Coalston, Monboddo.

1770. February 15. ANDREW STEWART *against* JAMES BISSET.

COMPENSATION—RETENTION.

A Creditor, when a sum of money was sent by his Debtor, and received, in order to be applied to a particular purpose, not allowed, upon the Bankruptcy of that Debtor, to plead retention of the money, or to apply it in compensation of his own Debt.

(*Faculty Collection, V. p. 58; Dictionary, App. I. Compensation, No. 2.*)

HAILES. The only difficulty seems to be that Bisset, not finding the bill in the hands of Coutts, notified to M'Donald, 3d November 1763, that he had placed the L.18 to the credit of M'Donald, and that M'Donald seems to have acquiesced in this transfer.

MONBODDO. M'Donald had no occasion to write any answer. As he had given the order to pay, and Bisset agreed,—from that time the holder of the bill became proprietor of the L.18. Bisset, therefore, was *in mala fide* to apply it to his own use.

JUSTICE-CLERK. It is a particular thing to put money into the hands of a man not to be applied to A or B, but to the holder of a bill in general. Bisset followed the faith of M'Donald, and went to Coutts to pay the money. Coutts could not take it, not being possessed of the bill. Bisset writes to M'Donald,—states the fact,—and adds,—I state it to your account. M'Donald makes no answer to this. This seems an acquiescence on the part of M'Donald.

KAIMES. The question is—To whom did the property belong? The money was M'Donald's till Bisset paid it; but afterwards M'Donald said he had ordered it to be paid to Stewart. This was a transference. Bisset may have wrote, or may not have wrote the letter to M'Donald—or the letter may have miscarried. [It was wrote; it did not miscarry.] Suppose Stewart out of the question, any creditor of M'Donald's might still arrest it.

PITFOUR. I think Stewart had a *jus qucesitum*.

COALSTON. Bisset undertook a trust. As soon as that was intimated, Macdonald could not recal it.

PRESIDENT. This was a trust in favour of the porteur.

On the 15th February 1770, "the Lords found Bisset liable to Stewart in the money;" altering the interlocutor of Lord Elliock.

Act. Cosmo Gordon. *Alt.* J. M'Claurin.