

No 42. the suspension they did likewise insist for the English debts. THE LORDS, before answer, ordain the witnesses inserted in the bond of ratification, and the comuners at the agreement when the bond of ratification was subscribed, to be examined, *ex officio*, if it was then treated and agreed that the Dutchess should relieve the suspenders of the English debts; reserving to the LORDS, after they are examined, to consider what the depositions shall import; and ordain the suspenders procurators to condescend upon the comuners, and refuse to examine the comuners as to any subsequent communing.

*Sir P. Home, MS. v. 2. No 718. 811. & 812.*

1686. March 23. RORY DAVIDSON *against* JOHN WAUCHOP'S HEIR.

No 43.

IN the case between John Wauchop's heir and Rory Davidson, for 3000 merks he had obliged himself to pay to the said John, if he would demit his office of macer, *alleged*, He got not the place, but James Gordon was preferred, and so it was *sine causa, et causa data causa non secuta*. *Answered*, Its cause was, that I by my demission should make the place vacant, which was all I was obliged to do; and you by the Register's recommendation was to procure it for yourself; I was not bound to get you to succeed me; so it was *emptio spei et jactus retis*. THE LORDS found Rory liable.

December 9.—RORY DAVIDSON'S case with John Wauchope's heir, mentioned 24th March 1686, was debated *in presentia*. *Alleged*, The bond was *causa data causa non secuta*, and so null. *Answered*, The cause and condition failing *casu fortuito*, by John Wauchop's death, without any fault or *mora* on his part, and this being *jactus retis et emptio spei* on Rory's part, *condictio chirographi et et repetitio pecuniæ cessat, per claram leg. 10. G. De condict. ob causam datorum*. *Replied*, It was not a completed bargain, but pendent till November 1682, till which time John Wauchope was bound to serve as macer, and he having died before, *nihil tibi deest*, you are *in lucro captando*, and I *in damno vitando*, likewise it depended *super implemento tertii*, the King's acceptance; and I had not so much time as to procure a new gift, because of his sudden intervenient death, and James Gordon's preference to it. And Vinnius is of the mind, that *condictio* holds in this case, in his additions to *Vecembecius, ad Tit. D. De condict. causa data*. THE LORDS adhered to their former interlocutor; but allowed him, out of the 4000 merks, 1000 merks for the expenses of his journey to London, in contemplation and prosecution of the bargain; which is conform to *l. 5. princ. D. eod. tit.* where the expense I am put to *intuitu* of the agreement, must be refunded to me.

*Fol. Dic. v. 1. p. 429. Fountainball, v. 1. p. 409. & 435.*