

the sums contained in the decreet-arbitral, till Agnew of Galdinoch, the charger's cedent, did implement and fulfil his part of the decreet-arbitral, by giving Sir Andrew a general discharge of the tutor-accounts, and of all his claims, except only the said sum of 5000 merks, decerned to him in full thereof; for this were to draw the money out of Sir Andrew's hands, and yet leave him to the hazard of Galdinoch's quarrelling the said decreet-arbitral, who assigned Stewart in general to the count and reckoning, but did not homologate the decreet-arbitral. And, though it was not conceived conditionally, and the one made the cause of the other, yet the Lords thought it was implied; and, therefore, found the letters orderly proceeded; the charger obtaining his cedent's general discharge to Sir Andrew, of all clags and claims he had to lay to his charge, except the sum decerned in the said decreet-arbitral.

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1693. *December 21.* The MAGISTRATES of the TOWN of GLASGOW against ROBERT GIBSON, their Tacksman.

THE Lords found the payment to the Provost unwarrantable, seeing the tack made it payable to the Town-treasurer, who only should receive the Town's money; and that it was not sufficient that the Town was owing Walter Gibson, their Provost, a greater sum, because then he should have got an act of council warranting him to pay it; and the Provost may yet pursue the Town: And as to the twenty shillings on the boll of malt, find him liable for the same, unless he subsumes that he was interrupted and debarred from the uplifting of it, as an illegal imposition; seeing he uplifted some: which the President thought not sufficient to make him any further liable than for his actual intromission: but the generality of the Lords found *ut supra*.

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1693. *December 21.* CHARLES JACKSON and his CHILDREN against SIR JAMES COCKBURN of that ilk.

THE Lords found the fitted account betwixt Sir Hary Wilkie, on the one hand, and Sir James Cockburn and Sir William Seton, on the other hand, produced, stating the balance to be only £4,217 Scots, not to be the rule or standard by which Charles Jackson was bound to count; seeing it appeared, by the decreet of preference which Charles had obtained against Peter de Grave as creditor and assignee by Sir Hary Wilkie, that it was not produced by him, but by Sir Hary and his assignee; and, though he insisted for that balance *primo loco*, yet it did not hinder him to make a further additional charge against Sir James. But the Lords did not find the count stated between Sir James and Andrew Houston of Garthland to be the rule either, till Sir James was heard whether it was *res inter alios acta*. And as to the *second* point, whether it was *bona fide* paid to Sir Hary Wilkie and his assignee, the Lords found he had no right to the said balance, and therefore found the payment unwarrantable: seeing it was not instructed that Sir Hary was a partner in the tack of the customs and excise with his brother, David Wilkie, and that his assignation thereto from Mr Archibald, as executor confirmed to his father David, was *a non ha-*