

No 51. ing any clause of annualrent, ought to compensate the other bond, albeit heritable, and bearing infeftment and premonition, which the said debtor was astricted to make to the said creditor before he loosed the sum; and so thereby the defender *alleged*, that he could not compensate, seeing he could not pay the sum, but upon requisition first made to the creditor to receive the same upon 40 days, and which not being done, far less was this compensation by pursuit now receivable, where the party was not charging this pursuer for that sum, which was repelled.

Act. *Mowat.*Alt. *Burnet.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 161. Durie, p. 672.*

1662. February. RELICT of INGLIS *against* The EARL of MURRAY.

No 52.

A relict, executrix of her husband, pursued a debtor of her husband. His plea of compensation founded on a debt due by the defunct, assigned, but not intimated, before the pursuit, was repelled.

THE Relict of umquhile Robert Inglis merchant, being creditrix by her contract of marriage, confirmed executrix to her husband; and, in the inventory, having given up a debt owing to him by the Earl of Murray, she gives power to ——— Crawford to pursue the Earl for payment. It was *excepted*, That the defender ought to have compensation; because, before the intending of this pursuit, the defunct was debtor to the defender in a sum of money assigned to him by Dr Leighton, now bishop in Dumblane. It was *answered, 1mo, Non relevat*, unless the assignation had been intimate, before the intending of the cause, to the executors or nearest of kin to the said Robert Inglis. *2do*, Though it had been intimate, yet it could give no ground of compensation; because the relict, by her contract, was a privileged creditrix before any other; and, in prejudice of her privilege, no assignation could be granted or received, to take away that preference from her which the law gave her.

THE LORDS repelled the allegiance.

*Gilmour, No 28. p. 22.*

1674. November 11. HAMILTON *against* The EARL of KINGHORN.

No 53.

A party having used expressions inducing an assignee to a debt due by him, to suppose he meant to hold himself to be the assignee's debtor, without mention-

JAMES MAULD of Melgum having assigned to James Hamilton two bonds, and he having intimate his assignation to the E. of Kinghorn, granter of the same, did thereafter write to the said Earl, shewing him that he had use for the sums contained in the said bouds; and that he desired a course might be taken to pay the same: And, in answer to his letter, the said Earl did write and subscribe a postscript upon a letter written to him by the said James Mauld to that purpose, that the said James Mauld had assured him, that he had made the assignation foresaid upon assurance that my Lord should not be troubled to pay