

1624. February 3. STEVENSON *against* L. CRAIGMILLER.

IN the action betwixt Stevenfon and Craigmiller, whereof mention is made No 24. p. 836. the LORDS found, That an assignee to a sentence obtained by him who was cedent, before the making of the assignation, might by virtue of that assignation, the same being intimated by the assignee, to the debtor, against whom the cedent had obtained the said sentence, in the cedent's own lifetime, execute the said sentence, by letters of horning, pointing, or comprising, at the assignee's own instance, (the said assignation being intimated, before the cedent's decease, to the debtor, as said is,) and that the assignee had no necessity to transfer the said sentence, before he could deduce execution, but that he might lawfully charge, &c. upon the said assignation so intimated, without any transferring, or other action.

*Fol. Dic. v. 1. p. 62. Durie, p. 104.*

\* \* Lord Kerse mentions the same case thus :

FOUND by the LORDS, That an assignation intimate before the cedent's decease, is sufficient warrant and title to raise letters of horning, pointing, and comprising, at the instance of the assignee, without transferring of the decret to a bond register.

*Kerse, fol. 54.*

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1663. January 22. WALLACE *against* EDGAR.

JAMES WALLACE, as assignee by James Scot, to a decret obtained against John Edgar in Dumfries, having charged thereupon, Edgar suspends and alleges compensation, upon debts due by Scot, the cedent to the suspender, before the intimation of his assignation ; and, therefore, according to the ordinary course, debts due by the cedent, before intimation, are relevant against the assignee, and condescends upon several bonds and decreets against the cedent, assigned to the suspender, before the charger's intimation. The suspender *answered*, That albeit any debt due by the cedent to the debtor, before intimation, will be relevant to compensate against the assignee ; yet that will not extend to sums assigned to the debtor, before the charger's assignation, unless that assignation had been intimate, before the charger's intimation, because the assignation only doth not constitute the suspender creditor, or the cedent debtor, until it be intimate ; and so there being no *debitum* and *creditum*, before the intimation, there can be no compensation, which is *contributio debiti et crediti*. The suspender *answered*, That the assignation constituted the right, and the *creditum* ; but the intimation was only

No 25.

An assignation intimated before the cedent's death, is sufficient warrant without transferring.

No 26.

The cedent is not denuded by his assignation without intimation ; and intimation cannot be considered barely as giving preference in competition ; but as a step of diligence necessary to complete the assignee's right.

No 26.

necessary in case of competition of other assignees, and he needed not intimate to Scot, *quia intus habet*, in respect Scot was owing him as much.

THE LORDS found no compensation, unless the suspender had intimate his assignation to the cedent, and so had constitute him his debtor, before the cedent was denuded, by the charger's assignation and intimation. (*See* COMPENSATION and RETENTION.)

*Fol. Dic. v. 1. p. 62. Stair, v. 1. p. 161.*

No 27.

A simple retrocession, without intimation, evacuates an assignation, not intimate.

1674. November 20. CRAIG against EDGAR of Wedderlie.

THE LORDS found, That a bond bearing annualrent, being assigned by a woman to her former husband, by her contract of marriage; and the assignation not being intimate, a retrocession did fettle again the right of the said bond in the person of the wife; *quia unumquodque dissolvitur, eo modo quo contrahitur*. And the said bond being thereafter assigned in favours of the second husband, he and his executors had right to the same; and that it was not *in bonis* of the first husband, though the retrocession was not intimate until after his decease.

Reporter, Lord Glendoick.

Clerk, Hay.

*Dirleton, No 195. p. 85.*

\* \* \* The same case is thus reported by Stair :

*Dec. 2. 1674.* WEDDERLIE being debtor to Beatrix Craig in 700 merks by bond, she, by her contract of marriage, assigned the same to John Greenlees, her husband, who, before his death, gave her a general assignation to all sums of money belonging to him; she did thereafter transfer the same sum to Mr John Louthian, her second husband in her contract of marriage with him; after whose death she is confirmed executrix to him, and thereupon pursues Wedderlie for payment, who alleged no process, because the right made by her first husband to her, was not intimate in his life; and so the sum remains *in bonis* of the first husband, and she must confirm as executrix to him; for albeit marriage following will stand as an intimation of the husband's right *jure mariti*, which is a legal assignation; that cannot be drawn in consequence to this assignation by a husband to his wife, *stante matrimonio*.—The pursuer answered, That this sum being heritable, did not fall to her first husband *jure mariti*, but was assigned to him by her contract; which assignation was never intimate; so that the right being imperfect, and standing yet in her own person, is not *in bonis* of her first husband; but the assignation to him being an incomplete right, is evacuate by his general assignation to her, which needed no intimation, seeing her assignation made none.

Which allegiance the Lords sustained.

*Fol. Dic. v. 1. p. 63. Stair, v. 2. p. 287.*