

suffered her to go forth of his service, upon the account she gave him bond for what she was owing him ; and, that bond being now quarrelled by her husband, Mr Ewart ought not to be precluded from the same manner of probation he would have got if he had been put to pursue her, and constituted the debt against her, at the time of the granting of the bond.

That the Lords found it only relevant complexly,—that they intromitted,—and that it is yet resting owing, unpaid,—is observed by Dury, 21st January 1636, *Couts* ; and the same was again decided by the Lords, within these few years, between *Alexander Cromby, Vintner*, and one *Leidington*. As also, in a parallel case, (12th Jan. 1678,) between *Dundass* and *Holborn*, about levy-money, for raising a company. See also 13th of November 1677, *Wilson*.

Vol. I. Page 48.

1679. July 10. PATRICK CUNNINGHAM against GEORGE SCOT of GIBLESTON.

MR Patrick Cunningham, writer, as having right from his wife, who was assignee, by Francis Hamilton, her former husband, pursues Mr George Scot of Gibleston, steward-depute of Orkney, for the sum of 500 merks, contained in a bond granted by him to the said Francis.

ALLEGED,—*1mo*, The bond is posterior to the assignation by Francis to his wife, and so cannot carry the right of this sum ; *2do*, It is *omnium bonorum*, and so fraudulent ; *3tio*, It was not intimated in the cedent's life ; *4to*, Francis, the cedent, was his debtor for a parcel of whalebone, prior to the assignation, and so he must have compensation.

REPLIED,—He assigns to all debts that shall be due to him at the time of his decease. The *2d* is *jus tertii* to the debtor. As to the *3d*, it shall be confirmed before extract. The compensation mentioned in the *4th* is neither liquidated nor verified, and so is no way receivable, *hoc loco*, against a liquid bond ; as the Lords found, Durie, 1st December 1626, *Balbegno* ; 6th December 1626, *Campbel* ; and many times since.

This being reported, the Lords repelled Mr George's compensation, founded on the intromission with the whalebone, by Francis Hamilton, cedent, unless he would prove it *scripto*, or by Mr Patrick's oath of knowledge ; and ordained the sum to be confirmed ; and sustained the *dispositio omnium bonorum tam præsentium quam futurorum*, to extend *etiam ad bona acquirenda*, and as a sufficient active title.

Vol. I. Page 50.

1679. July 10. DAVID SETON against JANET LUCKLAW.

IN the action pursued by David Seton, brother to Carriston, against Janet Lucklaw, for payment of a legacy of 1000 merks, left by one to whom Janet was executor ;

ALLEGED,—*Absolvitor*, because they had the said David's general discharge.

REPLIED,—*1mo*, That when he subscribed that discharge he had not seen the testament, and so knew not of the legacy ; and he offered to prove, by her oath,