

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 presentium 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,

that, at the time of his granting that general discharge, the said legacy was neither *actum, tractatum*, nor *cogitatum* among them; and so could not be included.

Newton would not sustain that as relevant and sufficient *per se*,—that the said legacy acclaimed was not then mentioned or communed on; because it might have been paid before that time: and therefore he found, that we behoved farther to refer to her oath likewise, that the said legacy, as it was not then spoken of, so it was neither paid by her, nor allowed at that time, nor at any time before.

*Vol. I. Page 50.*

1679. July 18.

SELKRIG *against* MACFARLANE.

SELKRIG *against* George Macfarlane's son. There is a bond bearing registration: it is assigned, the assignation is intimated, thereafter the cedent dies; after his death the assignee registers the writ; the registration is quarrelled as null, the clause of registration being of the nature of a mandate, and *mortuo mandatore expirat mandatum*; and that the cedent's name, who is dead, and not the assignee's, was in the bond, and so it could not be registrate at the dead man's instance.

REPLIED,—The assignation being intimated before the cedent's death, puts the assignee fully in the cedent's place.

This being reported to the Lords, they found, that it might be summarily registrate at the assignee's instance. Some formalists looked upon this as too great a dispensation and relaxation of form; but there is no material iniquity in it. See the Books of Sederunt, 9th July 1661.

*Vol. I. Page 51.*

1679. July 19. SIR WILLIAM PURVIS *against* MURRAY of LIVISTON, and MR JOHN ELLIS, Advocate, his Curator.

IN a process at Sir William Purvis's instance, as Collector of the Wards, *against* Murray of Liviston, and Mr John Ellis, advocate, his curator, for payment of £400 Scots, as the taxed avail of his marriage:

ALLEGED,—The words in Liviston's charter, *quando contigerit*, signify when he shall be married, at least when he enters to his lands, at the age of twenty-one years; and so he cannot be liable to pay it sooner.

REPLIED,—These words in law import, that the avail of the marriage is payable as soon as he is marriageable; which is in a man at fourteen, and he is eighteen years old. And after fourteen the superior may offer a woman to his ward-vassal in marriage: *ergo*, the single is then due; *et cessit et venit dies*.

The Lords found it due immediately after fourteen. But this wants not difficulty, and was an interlocutor upon collusion betwixt the parties.

*Vol. I. Page 51.*

1679. July 23.

MURDOCH *against* THOMAS INGLIS.

MURDOCH, an apothecary, pursues Thomas Inglis, merchant, to remove from a shop in Edinburgh.

ALLEGED,—He cannot remove, because Murdoch is but a party owner,—one