

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.

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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.

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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.

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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