

That the pursuer's assignation was not intimated in the cedent's lifetime, and so was *in bonis* of the defunct, and ought to be confirmed. Answered, The pursuer shall give a discharge with warrandice, which the Lords have found sufficient; and the commissary is not compearing. Replied, Where a bond assigned contains an heritable quality, the Lords sustain a discharge with warrandice as sufficient; but the sum here assigned, being moveable, must be confirmed. The Lords ordained the pursuer to confirm before sentence.

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1684. *March.* WILLIAM GRAY of INNERNICHTY *against* NICOLAS BARCLAY.

A DEBTOR, pursued at the instance of an assignee, alleged, That the assignation not being intimated in the cedent's lifetime, it was *in bonis defuncti*. Answered, Such a defence is not competent to the debtor, and there is no creditor competing upon a better diligence; sometimes, again, heritable sums are assigned, which cannot be confirmed; and the pursuer offers a discharge with warrandice. The Lords sustained the allegiance for the defender, the sum being moveable.

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1684. *March.* DAVID BISHOP *against* MR PATRICK SHIELLS.

A GRATUITOUS disposition by an heir was reduced, upon the Act of Parliament 1661, by the predecessor's creditor, year and day after the predecessor's death, though his debt was not constituted against the heir before the disposition. *Vide* No. 773, [Lord Ballenden *against* William Murray, March 1685.]

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1684. *March.* JAMES COCKBURN *against* ELLIOT of STOBBS.

A CREDITOR having taken bond for payment of a sum, with this quality, That if the debtor did obtain a decret of adjudication of his lands between and Martinmas next, he, the creditor, should except on't as payment *pro tanto*; and having pursued for payment of the whole sum, upon the debtor's failing to procure the adjudication, the Lords prorogated the term for recovering of the said decret, in respect the creditor could not condescend upon any material prejudice by delay: though it was contended by the pursuer, that the provision, being a voluntary concession limited to a time, and not in the case of a failyie, could not be extended and prorogated.

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