

No 5. Sir James Ramsay against Robertson, No 3. p. 2924. where the LORDS 'decerned Robertson to repeat what he, as executor-creditor, had recovered 'from Ramsay, upon finding of a discharge of the debt;' and here the payment was not made by the Earl or by his warrant, but by the error of his chamberlains. It was *replied*, That what was paid by Ramsay to Robertson was not voluntary, but by a transaction upon a depending process; but voluntary payment, of what was due to a creditor, though the payer was not debtor, can never be repeated, whether it were paid by the Earl, or by his chamberlains, or any other.

THE LORDS found Callander obliged to repeat, if he had acquired the assignation, for payment of a sum whereby he was in the same case as his cedent, and was not a creditor as to what was paid before his assignation, but found it relevant, 'That his assignation was in satisfaction of a debt due to him by Gloret before the assignation, equivalent to the sum assigned;' so that he got no more from Mar and his chamberlains, but what was to him by Gloret.

Fol. Dic. v. 1. p. 187. Stair, v. 2. p. 866.

1684. *March.* ANDREW KER in Chatto, *against* WALTER RUTHERFORD.

No 6.

A DEBTOR, who had paid to the obtainer of a decret of furthcoming, and got his discharge, being thereafter decerned at the instance of an assignee, whose assignation had been intimated before the arrestment, pursued the arrester upon the warrandice in his discharge.

Alleged for the defender; He could not be liable, seeing *sum receptit*, and the pursuer had not obtruded, as he ought, the anterior intimation of the assignation, during the process of furthcoming; which, if he had done, the arrester would have secured himself against the other estate of the common debtor, who is now become bankrupt.

THE LORDS sustained the allegiance, and assoilzied.

Fol. Dic. v. 1. p. 186. Harcarse, (ARRESTMENT.) No 81. p. 15.

1713. *July 12.* CREDITORS of MUIRHEAD *against* HAMILTON.

No 7.

A SCOTSMAN, who died a soldier in Flanders, having left a sum of money in the hands of his Colonel, which a creditor of his uplifted from the Colonel, by virtue of an administration in the Prerogative Court of Canterbury; the LORDS found it relevant to assoilzie the creditor from repeating the money from executors *qua* creditors, confirmed before the Commissaries of Edinburgh, that he had got *bona fide* payment before any process or confirmation in Scotland.

Fol. Dic. v. 1. p. 187.

* * * See The particulars of this case No 26. p. 1796.