

sumes property. And the defender having discharged his debtor of the like sum for which the bridle was appreciate, he but *suum recepit*, which ought to defend against *rei vindicatio* as well as *condictio indebiti*. Answered for the pursuer, Though *directa rei vindicatio* be properly competent *contra possessorem*, yet the *actio utilis* is competent against any person who received benefit by the thing *in quantum lucratus*, and the defender must be liable for the price, as *surrogatum*; otherwise persons might come to be disappointed of their property by the extinction or loss of the subject: and the defender's oath of calumny is craved, if he had no reason to think that the bridle belonged not to Thomas Douglass. The Lords inclined to repel the defence; but, before answer, ordained some points of fact to be inquired into.

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1686. *January.* SIR JAMES STAMFIELD *against* MR ROBERT BLACKWOOD.

JOHN Macfarlane having granted bond to Mr David Watson, who assigned it to Mr John Mackenzie, who transferred it to Mr Robert Blackwood; and thereafter Sir James Stamfield having, after the assignation to Mr Mackenzie, and before his translation to Blackwood, arrested the money in the debtor's hands, as truly belonging to Sir Donald Macdonald, and only in trust in Mr Watson's person;—in the competition betwixt the arrester and Mr Blackwood, it was alleged for the former, That he offered to prove, by the oaths of Mr Macfarlane and Mr Mackenzie, That the bond was granted for the behoof of Sir Donald. Answered for Mr Robert Blackwood, That the cedent could not depone, nor the debtor be examined upon the trust against him, an assignee for an onerous cause. The Lords ordained both Mr Macfarlane and Mr Mackenzie, and also Mr Robert Blackwood, to be examined about the trust.

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1686. *January.* JOHN ADAM *against* JAMES KER and ROBERTSON.

FOUND that a donator of *ultimus hæres*, being in the case of an heir, could not quarrel an assignation granted by the defunct, for want of intimation in his lifetime.

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1686. *January.* JOHN MARSHALL, and CHILDREN of ——— *against* MR JOHN RICHARDSON and the HEIR.

A HUSBAND, in his contract of marriage, being obliged to secure the conquest during the marriage, to himself and his wife in conjunct fee and liferent, and to the bairns of the marriage equally in fee, took infetment in the conquest to himself, and the heirs of the marriage, and granted bonds of provision to the younger