

1687. *February.* JOHN CHANCELOUR *against* MAJOR BAITMAN.

PROVOST Drummond having disposed his goods to Bailie Hamilton, after he had been charged with horning by Major Baitman; John Chancellour and others arrested, afterwards, the goods in the common debtor's shop, and in Hamilton's hands; and thereafter Baitman arrested also. Chancellour claimed preference, as being the first arrester. Alleged for Baitman, That the disposition was preferable to the arrestment used by Chancellour; which disposition, though reduced upon the act 1621, as *in fraudem* of Baitman's anterior charge, excludes all posterior diligences. Answered, That Baitman could found on the disposition, which is not in favours, and Bailie Hamilton does not oppose John Chancellour; so that his diligence of arrestment must be considered as if the disposition were passed from. The Lords preferred Baitman, unless Chancellour had grounds sufficient to reduce the said disposition.—*February* 1687. Thereafter this interlocutor was stopped. *Vide* No. 153, [Laurence Gellaty against Stuart, 3d February 1688;] and No. 439, [James Room against Robert Cleland, December 1687.]

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1687. *February.* ALEXANDER TURPIE *against* JAMES ARCHIBALD.

FOUND that a sum assigned in trust fell not under the cedent's *bona* at his decease, the assignation being intimated in his lifetime.

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1687. *February.* JOHN OGILVY *against* BROWN.

AN assignation, not intimated, sustained as a sufficient title to pursue reduction, *ex capite inhibitionis*, raised on the bond assigned, without necessity of a licence; but that the assignee should confirm before extracting.

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1687. *February.* LAW *against* ROBERT CURRIE.

DEBATED, If a debtor's being witness in an assignation to the debt be not an intimation *quoad* him, so as to hinder the subject assigned to fall *in bonis* of the cedent; but heritable bonds need no confirmation, though not intimated.

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1687. *February.* DAVID OSWALD *against* SOMERVEL and BOYD.

FOUND that a disposition, with warrandice, by a husband to his wife, *inter*