

1688. *January 27.* JAMES OSWALD *against* CAPTAIN HAMILTON.

IN a competition betwixt James Oswald, as executor-creditor to Ninian Henderson, and Captain Hamilton assignee, by Ninian's son, to a new blank bond taken by the cedent, after his father's death, from one Wauchop, in place of an old bond granted by Wauchop to the defunct; the cedent and Wauchop being both pursued, and the former having deponed that he gave up the old bond, and took the new in place thereof, for saving the charges of confirmation, they were decerned to deliver up the said bond, or pay the money. Alleged for Hamilton, That the debtor ought to be liable to him, as having the blank bond delivered to him; and if he renewed the bond unwarrantably, let him be liable to both, and seek his relief of young Henderson. Answered for Oswald, That his decret against young Henderson and Wauchop, being prior to the intimation of the blank bond, is preferable thereto; seeing, in a competition with creditors, blank bonds require intimation. Alleged for Wauchop, That he not being obliged to know that the creditor was dead, as he might have retired his bond upon *bona fide* payment, so he might renew a blank bond; and *bona fides non patitur ut idem bis exigatur*. The Lords preferred James Oswald, and found the debtor but once liable.

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1688. *February.* SIR JAMES DICK *against* WILLIAM DICK of GRANGE.

ONE having got an assignation to a bond in satisfaction, with a provision that the assignee (in case he should not get payment of the bond assigned, by doing diligence by horning, within fifteen days after the term of payment thereof,) might then recur against the cedent; the assignee did no diligence till about two months after the time prefixed, and then intented a pursuit of recourse against the cedent. Alleged for the defender, That the diligence, two months after the time appointed, was not sufficient. Answered, The debtor was in as good case when the diligence was used as he was at the term of payment; and the pursuer got a partial payment, which occasioned the delay. Replied, The condition was precise as to the time; and the debtor was suspected at the date of the assignation, and now is broken and gone; which is the difference betwixt his case and that of Dundas against Wilson, December 1686. The Lords sustained the allegiance and reply, and assoilyied from the relief. *Vide* No. 117, [Dundas of Ballendary against Mr George Wilson of Pleughlands, December 1686.]

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1688. *February.* JAMES MERCER *against* CUNNINGHAM of BARNS.

ONE Elizabeth Cunningham having granted a bond, mentioning no cause, to Mercer her brother-in-law, or to his wife the granter's sister, or to the heirs of