

No 91. assignation, and therefore he can only *uti jure auctoris*; but if the donatar were competing, it were beyond question that he would be excluded, and the gift found simulate to the rebel's behoof.

THE LORDS adhered to their former interlocutor, but found that the rebel's bond granted after rebellion was still to be presumed simulate; being without sums received to that effect, that the rebel might burden the gift, and dispose upon the money, being moveable; which because of commerce would be effectual, even after rebellion; and therefore found that an assignee behoved to instruct his debt to be prior to the rebellion, and satisfaction prior to the general declarator; but found, that the bond granted by the rebel to Brown, bearing 'to be for wines,' though it mention not the time when they were sent from France, yet seeing the date was shortly after denunciation, they found it probable by writ, the merchant's compt-books, bills of loading, and witnesses, 'that there were wines truly loaded in France by Brown upon Sanderson's account, set down in Brown's books effecting to this sum, and that prior to the denunciation,' and found the allegiance of simulation relevant, that the rebel had a considerable and conspicuous estate, unless it were instructed that the donatar had done some diligence to affect the same; and that Veitch's assignation being posterior to Brown's payment, he was in no better case than the donatar.

Stair, v. 2. p. 482.

1697. December 9. MILN of Carriden *against* CREDITORS of NICOLSON.

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THERE being a set of adjudgers ranked *pari passu*, some of them struck at by inhibition; yet it was found that the inhibition could have no effect, in respect the other adjudications were more than sufficient to exhaust the subject; with whom the inhibitor, who had not adjudged, could not come in *pari passu*, though he should adjudge; it being more than year and day since the first effectual adjudication; and therefore he could have no interest to reduce, seeing he could make no benefit by his reduction. See No 136. p. 1046.

Fol: Dic. v. 1. p. 184.

* * * See This case *voce* INHIBITION.

1707. November 27.

CAPTAIN FRANCIS CHARTERIS and MR PATRICK MIDDLETON *against* SIR ROBERT SINCLAIR, of Stevenstown.

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In a competi-
tion between
assignations

THIS was a competition about the Lady Dalhousie's liferent annuity. Charteris and Middleton, as creditors to my Lord Bellenden, her second husband, had

formal assignations thereto, duly intimated: Sir Robert Sinclair produced a bond granted to him by the Lord Ballantyne and Earl of Dalhousie, containing a corroboration of an assignation to my Lady's jointure; it was *objected* against this by the other creditors, that they believed to be preferred, because his assignation was not intimated, and theirs were. *Answered*; It needed no other intimation but Dalhousie's signing the bond; for, to whom were they obliged to intimate it, except to him? and that was sufficiently supplied by his being obligant in the bond and assignation. *Answered*. Private knowledge is not equivalent to an assignation, but it must be a legal one, which can only be by a notary and instrument, that being an essential solemnity to complete assignations, as was found, Durie, p. 128. 25th June 1624, Adamson against M Mitchell, No 61. p. 859. *2da*; Though the assignation be *in eodem corpore* with the bond, yet Dalhousie was not concerned in the assigning part; that belonged to Ballantyne to look to, and therefore it is to be presumed he regarded only the bond, and not the assignation, as was found in a parallel case, the last of November 1622, Sir John Murray *contra* Durham, No 56. p. 855. *3to* Dalhousie was not the sole party to whom it should have been intimated, but the tenants who pay it, were also concerned; as Stair insinuates, tit. ASSIGNATIONS, § 8. *Duplied*; Legal knowledge of an assignation may be sundry ways inferred; besides an intimation; such as, by writing a missive letter, or paying a year's annual rent; and the subscribing of an assignation is as strong as any of these cases. *2do*; Though a witness is not bound to know the contents of a writ, yet a party obligant is bound to know what he subscribes. The Lords preferred Sir Robert Sinclair, and found there was no necessity of any other intimation, except Dalhousie's subscribing the writ, which sufficiently supplied it. See ASSIGNATION.

Fountainball, v. 2. p. 397.

1709. January 11.

Competition between SIR ALEXANDER COCKBURN of Langton's CREDITORS.

In the ranking of Sir Alexander Cockburn of Langton's Creditors, a competition arose betwixt three sorts of creditors. Some had inhibited and adjudged; others had adjudged; but for debts prior to the inhibition; a third class had got voluntary rights and infestments of annual rent, but posterior to the inhibitions. The inhibitors raise a reduction of the annual renter's rights, and obtain a decret. The annual rents being thus removed out of the way, the simple adjudgers being within year and day of the inhibiting adjudgers, crave to come in *pari passu* with them, in virtue of the 62d act 1661 between debtor and creditor, making them all joint proprietors, as if they had been all contained in one apprising; and in the division to affect the subject effecting to their sums, as if the annual rents had never been granted. Against which the inhibitors con-

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and a bond containing a corroboration of an assignation, the bond, being prior, was preferred, as the debtor subscribed it; which was considered to be equivalent to intimation.

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A competition between three sorts of creditors, inhibitors, adjudgers, and voluntary disponees. See short account of the case in the synopsis.