

ed in the hands of George Piper by way of commission, in order to be sold at Coningsberg, and the product to be returned in other goods from thence. William Souper claimed to be preferred upon this ground, that the principal commission accepted by Mr. Piper was indorsed and delivered up to him, and ought to prefer him to any separate right made of the goods therein contained, though first intimated; because, his right needed not to be intimated, more than the indorsation of a bill of exchange; and, in transactions among merchants, no assignation to an accepted commission or bill, without delivery of the principal commission or bill, is valid, or can warrant the acceptor to pay.

ANSWERED for Balwylo,—He is clearly preferable, by having both intimated an assignation to the goods, and arrested them in Piper's hands, before intimation of Souper's right. For where was it ever heard that privileges allowed by law to bills of exchange, are communicable to other merchant-conveyances? and to say that an assignation to merchant goods could be completed without a formal intimation, or that such an assignation could not be made without delivering up the principal commission, is *sine lege loqui*.

The Lords preferred James Miln of Balwylo.

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1708. July 16.

[ANENT the POOR'S ROLL.]

The Lords refused a gratis warrant; in respect the report of the Advocates for the poor bore not that the petitioner had *probabilem litigandi causam*, but only that he deserved the benefit of the poor's roll.

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1708. July 16. WALTER WILLIAMSON of Cardrona *against* THOMAS THOMSON, Writer in Edinburgh.

THOMAS WILLIAMSON, as apparent heir to Thomas Williamson, merchant in Peebles, having disposed some tenements of land there to Thomas Thomson, without a procuratory to serve him heir to his predecessor; and, thereafter, disposed the same to the deceased William Williamson, sheriff-clerk in that town, with a procuratory to serve him heir: Thomas Thomson applied to, and required John Frier, bailie in Peebles, to cognosce Thomas Williamson, his author, heir to his predecessor; and, thereafter, to infest himself upon Thomas Williamson's disposition: which the bailie refusing to do, Thomas Thomson protested against him for cost, skaith, and damage, and took instruments, *September 26, 1707*. Thereafter, Mr. Walter Williamson of Cardrona, son to the deceased William Williamson, was infest in the lands aforesaid, as heir to him, after cognoscing Thomas Williamson heir to his predecessor; and raised a declarator of his own right, with a reduction of the disposition to Thomas Thomson.

ANSWERED for Thomas Thomson,—Albeit Cardrona was first infest in the subject under debate, yet his instrument against the bailie being prior to Cardrona's