

1709. February 23.

WILLIAM HAMILTON Writer in Edinburgh, and COLIN MACKENZIE Goldsmith
there, against SIR JAMES CAMPBELL of Aberuchil.

IN a competition betwixt William Hamilton and Colin Mackenzie, as assignees by Sir David Thoires advocatē, to a debt due to him by the Lady Greenock, and Sir James Campbell, who craved to be preferred upon an arrestment posterior to the intimation of their assignation, upon this ground, That the assignation was granted by Sir David in the abbey, after a charge of horning given to him by Sir James Campbell, and so reducible upon the act of Parliament 1621.

Alleged for the assignees, *1st*, An unregistered horning could have no effect, more than an unregistered inhibition, against onerous singular successors: Especially considering, that Sir David Thoires was not insolvent, Stair, Instit. L. 4. tit. 35. § 18. And the act of Parliament 1621 concerns dyvours. *2dly*, If Aberuchil, who is secured for his money by other rights and diligences, shall be preferred to the assignees, as to the debt due by the Lady Greenock, he ought to assign to them his other rights and diligences for operating their payment: As a creditor, who, having an univerfal infestment, attacks and carries away a particular subject, whereto another creditor had right by a posterior infestment, is bound to assign to that other for making up *quod illi deest* by the eviction.

Answered for Sir James Campbell, *1st*, Horning without denunciation or registration, is a sufficient ground to reduce upon the act 1621; February 21. 1623, Craw *contra* Irving, Durie, p. 48. *voce* COMPETITION; and in the case, Chaplain and Bateman *contra* Creditors of Provost Drummond, (*infra h. t.*) *2dly*, Sir James is not bound to assign, in respect his payment is out of the debtor's own effects, whereby the debt is extinguished.

Replied, Though the effects out of which Sir James is seeking payment were once the debtor's, they belonged to the assignees at the time Sir James affected the same: And therefore he who comes in upon their right, *per emulationem*, should assign his other funds to them.

THE LORDS sustained the reason of reduction, and preferred Sir James Campbell; but ordained him to assign his other security to William Hamilton and Colin Mackenzie, upon receiving payment from them. See PERSONAL and TRANSMISSIBLE.

Fol. Dic. v. 1. p. 79. Forbes, p. 325.

1742. July 22. DUFF of Kilmuir against the REPRESENTATIVES of BELL.

A CREDITOR having, in 1732, charged his debtor with horning, and denounced him at the cross of Edinburgh; and thereupon taken out caption, and, in about three months thereafter, the debtor having assigned a debt to his brother in security of a debt formerly due to him; in the year 1740, the creditor coming to

No 150.
Reduction on
the act 1621
sustained up-
on an unre-
gistered
horning.

No 151.
Found in con-
formity with
No 141. p.
1051.