

swered for the arrester, That he having arrested before the assignation, and been in ordinary diligence, the common debtor could not disappoint his arrestment, which was *nexus realis*, by any voluntary assignation. Replied for the assignee, The arrestment is null, in so far as the copy bears That the arrestment was used at the within designed Sir William Primrose's instance, for a debt due to the within designed Sir Charles Erskine; so that the designation is not full, and the execution is but a loose paper, not indorsed upon the letters. And, as the Act of Parliament 1672, cap. 6, requires the parties in summons to be fully designed, otherwise that the citation shall be null; this, *a pari*, should be observed in arrestments. 2. Though the copy bears to be stamped, there is no vestige of the stamp. 3. The debtor in whose hands the arrestment was laid on, being dead, the effect thereof ceased, as in inhibitions where the inhibited party dies. Duplied for the arrester, The Act of Parliament 1672 concerns only the execution of summonses: besides, *Sir William Primrose* and *Sir Charles Erskine* is a kind of designation more certain than the general designation of *Writer in Edinburgh*;—that would be sufficient though there were many other persons of that name and employment. 2. The copy bears the stamp to have been affixed, which must be presumed true till the contrary be proven. Though the Act of Parliament required stamping, when writing was not much in use, it is not customary to use any wax; and frequently the paper is not so much as laid down, stamping being considered but as a mere formality. 3. Whatever might be prevented [pretended] for the extinction of the arrestment, if the heir had paid, not knowing of the arrestment laid in his father's hand, that cannot hold in this case, where the debt continues unpaid. The Lords found, that the Act of Parliament 1672 did not concern arrestments; and that arrestment died with the debtor in whose hand it was made, as inhibition does. But this part of the interlocutor was stopped, in order to a farther hearing the next session; and the Lords delayed to give answer to the objection about the stamping. *Vide* No. 125, [Campbell against Clark, July 1688.]

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1684. *March.* SIR ALEXANDER FALCONER *against* SIR DAVID CARNEGIE of PITTARROW.

It was brought to interlocutor, but not determined, that an arrestment was null, because the execution expressed not that a copy was delivered either personally, or at the party's dwelling-house; but only that a copy was delivered. And, though executions are not registrate, such a solemnity ought not to be dispensed with more than in citations, which require not registration; and such omissions would render the improving of executions more difficult.

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1684. *March.* WILLIAM GRAY *against* The RELICT of BAILIE DEANS.

IN a pursuit at the instance of an assignee, it was alleged for the defender,

That the pursuer's assignation was not intimated in the cedent's lifetime, and so was *in bonis* of the defunct, and ought to be confirmed. Answered, The pursuer shall give a discharge with warrandice, which the Lords have found sufficient; and the commissary is not compearing. Replied, Where a bond assigned contains an heritable quality, the Lords sustain a discharge with warrandice as sufficient; but the sum here assigned, being moveable, must be confirmed. The Lords ordained the pursuer to confirm before sentence.

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1684. *March.* WILLIAM GRAY of INNERNICHTY *against* NICOLAS BARCLAY.

A DEBTOR, pursued at the instance of an assignee, alleged, That the assignation not being intimated in the cedent's lifetime, it was *in bonis defuncti*. Answered, Such a defence is not competent to the debtor, and there is no creditor competing upon a better diligence; sometimes, again, heritable sums are assigned, which cannot be confirmed; and the pursuer offers a discharge with warrandice. The Lords sustained the allegiance for the defender, the sum being moveable.

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1684. *March.* DAVID BISHOP *against* MR PATRICK SHIELLS.

A GRATUITOUS disposition by an heir was reduced, upon the Act of Parliament 1661, by the predecessor's creditor, year and day after the predecessor's death, though his debt was not constituted against the heir before the disposition. *Vide* No. 773, [Lord Ballenden *against* William Murray, March 1685.]

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1684. *March.* JAMES COCKBURN *against* ELLIOT of STOBBS.

A CREDITOR having taken bond for payment of a sum, with this quality, That if the debtor did obtain a decret of adjudication of his lands between and Martinmas next, he, the creditor, should except on't as payment *pro tanto*; and having pursued for payment of the whole sum, upon the debtor's failing to procure the adjudication, the Lords prorogated the term for recovering of the said decret, in respect the creditor could not condescend upon any material prejudice by delay: though it was contended by the pursuer, that the provision, being a voluntary concession limited to a time, and not in the case of a failyie, could not be extended and prorogated.

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