

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.

No 92.

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.

No 93.
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