

No. 26. 1666. *November 24.* GOVAN *against* PAIP.

IN the case, the Lords found, That an assignation not being intimated in the cedent's time (and consequently the debt being *in bonis defuncti*) ought to be confirmed; but the Lords, in consideration that the debt was small, found process at the assignee's instance, he finding caution for, the *quot* effeiring thereto.

Fol. Dic. v. 2. p. 368. Dirleton, No. 51. p. 21.

No. 27. 1683. *March 14.* SANDILANDS *against* SANDILANDS.

THE Lords found, (against the interest of the Commissaries), That an assignation made on death-bed, and intimated then, where there were neither a relict, children, nor creditors, (whom he cannot defraud on death-bed), secluded confirmation, unless the assignation bore, that, upon his recovery, it should come back to his person again.—And yet such rights may be easily made in defraud of the Commissaries quot. See Act 26. Parl. 1690.

Fol. Dic. v. 2. p. 368. Fountainhall, v. 1. p. 225.

* * P. Falconer's report of this case is No. 23. p. 3202. *voce* DEATH-BED.

No. 28. 1729. *January.* GORDON *against* CAMPBELL.

CAPTAIN George Campbell, in his testament, having legated to his wife the special sum of £1000 Sterling, due by Campbell of Calder to him by bond, it was found, That this, being a special legacy, needed not confirmation. See APPENDIX.

Fol. Dic. v. 2. p. 368.

SECT. V.

Whether requisite where the Subject is in the Possession of the Heir or Executor?—Whether the Father's Possession the same with the Child's?

No. 29. 1610. *January.* BLACKBURN and his SPOUSE *against* RIG.

IN an action pursued by Samuel Blackburn, and Janet Adamson his spouse, as heir to John Adamson, her father's brother's son, *contra* William Rig, for intromis-

sion with the heirship-goods which pertained to the said Robert the time of his decease, it was found, That she could have no action against him, because at the time of his decease he had a son of his own body, lawfully procreate, who was his apparent heir, to whom John Rig was tutor nominated; and he who was tutor to the bairn might lawfully have intromitted therewith, and that notwithstanding the bairn was never entered heir, because an apparent heir may possess heirship-goods, and dispoise thereupon, albeit he may not pursue thereupon for the same if they be out of his hands.

No. 29.

Fol. Dic. v. 2. p. 368. Kerse, MS. p. 136.

* * Haddington reports this case :

ADAMSON, heir to umquhile Adamson, her brother, and spouse to Samuel Blackburn, pursued William Rig for her brother's heirship goods, intromitted with by the said William. He excepted, That her umquhile brother having a son, who was his apparent heir, to whom William was tutor, the heirship goods were roup'd and sold, according to the custom of the burgh, and the price delivered to the said minor, or converted to his use, who lived till he was fifteen years, and made his testament and constituted executors; so no process should be granted against William Rig. It was replied, That unless that minor had been retoured heir to his father, he could have no right to his heirship; and so William Rig, as intromitter, should be answerable. Notwithstanding whereof, the exception was found relevant.

Haddington, MS. No. 1781.

1610. December 8. SMEITON against RO. HAMILTON.

AN assignation to the hail life-rent and hail goods and gear whatsoever pertaining a defunct, having taken little effect by possession, and action being moved thereupon after the cedent's decease, the Lords would not find the assignation lawful for any farther than had beginning of possession in the cedent's lifetime; and found not the assignation lawful and valid for such goods, gear, annual-rents, farms, or others, whereof the assignee had acquired no possession, nor moved any action in the lifetime of the cedent. Thereafter Smeiton alleging possession in the lifetime of the cedent, of the most part of all the goods and rents contained in the assignation, the Lords found his answer relevant to sustain his assignation.

No. 30.

An assignation *omnium bonorum* will not be sustained without confirmation, unless in so far as possession had been obtained during the cedent's life.

In that same cause, the Lords found, That a sasine given of an annual-rent, by virtue of a precept contained in the sasine, was not lawful, unless the precept were produced, or possession alleged or proved.

Fol. Dic. v. 2. p. 369. Haddington, MS. No. 2047.