

DIVISION II.

Single Witness, in what cases sustained.

S E C T. I.

Cedent's oath, if good against the Assignee.

1617. *January 7.*A: *against B.*

No 289.

THE LORDS found a submission null, because it was subscribed only by one notary, it being about the heritable right of an acre of land; and when the truth was referred to the party's oath, the LORDS would not take the oath of the cedent, in prejudice of the assignee. *Item*, the LORDS in the same cause found a decret null for three causes, *conjunctim*; *imo*, Because some of the submitters had not subscribed; *2do*, Because one of the Judges had not subscribed the submission, and yet had subscribed the decret; *3tio*, That the decret bore not that the Judges had received the parties' claims.

Fol. Dic. v. 2. p. 235. Kerse, MS. fol. 180.

1622. *March 16.*CUNNINGHAM *against* CUNNINGHAM.

No 290.

Mr JOHN CUNNINGHAM of Findick being charged to pay, as cautioner for Glengenock, 600 merks to Cunningham of Crawford, assignee to Alexander Cunningham, suspended upon payment made to the cedent, and for proving his reason produced a discharge granted by Alexander Cunningham to him of the said sum. The discharge was impugned as subscribed only by one notary. It was *answered*, That he referred the verity of the command given to the notary to the cedent's oath. It was *replied*, It could not prejudice the assignee by his declaration. THE LORDS, before interlocutor, declared they would receive the cedent's and assignee's oath, and examine the witnesses.

Fol. Dic. v. 2. p. 235. Haddington, MS. No 2615.

The nullity of a discharge, as being subscribed by but one witness, found not suppiable by the creditor's oath in prejudice of his onerous assignee.

1627. *February 15.*CUNNINGHAM *against* ROSSE.

No 291.

IN a suspension of William Cunnighame against John Rosse, who being assignee made by Mr Matthew Crawford, had charged the said William for payment of some money addebted by him to the cedent, for the price of some

Oath of the cedent to prove payment not good against an onerous assignation.

No 291.

lands, bought from the cedent by the suspender, and which he *alleged* in his suspension he had lawful cause to retain against the assignee, seeing the cedent in the contract of alienation of the said lands had disposed the farms of that crop, the year of the alienation, which were nevertheless uplifted and intromitted with by himself, the quantity, price, and intromission whereof he referred to the oath of the cedent, and who now being *non solvendo*, the same was *alleged* ought to be received against the assignee, and that he ought not to be prejudged by the said assignation made to his prejudice, seeing as it would meet the cedent's self, the non liquidation, and all being elided by the referring to his oath, so ought the same to be admitted against the assignee. THE LORDS found that the cedent's oath could not be taken against the assignee, therefore, seeing the debt was not liquidated against the cedent's self, and they ordained the money (for the same was consigned in the suspension) to be given to the assignee, he finding sufficient caution to repay the same to the suspender, whensoever the cedent should be constituted lawful debtor to the suspender; in the liquidated farms foresaid, disposed to him in the said contract, and when his intromission therewith should be lawfully tried; for the making of the assignation to the cedent, who was become *non solvendo*, was not found to be sufficient to prejudge the suspender of his execution of that head of the contract, wherein the cedent was obliged to him, inhibition being also executed by the suspender thereupon against the cedent, before the making of the said assignation.

Clerk, Hay.

*Fol. Dic. v. 2. p. 235. Durie, p. 274.*1662. February 15. LAIRD OF PITFODDELS *against* LAIRD OF GLENKINDY.

No 292.
Oath of the
cedent good
against the
assignee be-
fore intima-
tion.

IN the review of a decret in 1659, at the instance of the Laird of Pitfoddes, against the Laird of Glenkindy; in which decret, Glenkindy's cedent's oath, having been taken, that the cause of the bond was for an assignation to a wadset, which was excluded by apprising; after report whereof, Glenkindy the assignee *alleged*, That his cedent's oath could not prejudice him; and it being *answered*, That he made no objection before the oath taken, neither could make any just objection, because the oath of the cedent, any time before intimation, is sufficient against the assignee; Glenkindy *answ. rea*, That his being called in that process as assignee, and compearing, and insisting as assignee, was an intimation, which was before taking of the oath, which was found relevant in the said decree, and now rescinded by the LORDS, upon this consideration, that the citation being *ad hunc effectum*, to instruct the cause of the bond, the insisting in that pursuit could not be such an intimation, as to exclude the cedent's oath.

Fol. Dic. v. 2. p. 235. Stair, v. 1. p. 101.