

because it was made by the cedent on his death-bed ; neither was it found necessary to prove, that it was subscribed in his death-bed, seeing the assignation itself bore, ' That the notaries subscribed for him, because he was then unable, ' being in his sickness upon his death-bed, to subscribe himself ;' and which the said notaries, in their subscriptions of the said assignation testified, and which the LORDS found sufficient to qualify that it was done upon death-bed, without any other probation.

No 28.

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Act. Lawrie.

Alt. ———.

Clerk, Scot.

*Fol. Dic. v. I. p. 213. Durie, p. 214.*

1628. February 16.

ROBERTSON *against* DEBTORS.

IN an action betwixt Robertson and her Debtors, the pursuer being relict of her husband, and being made assignee by him to certain bonds and sums, contained in the assignation therein specified, addebted by the Debtors to the husband, and done long before the decease of her husband, pursues the Debtors contained in the assignation, for payment of the moneys owing by them. The pursuit upon this assignation was sustained at the relict's instance, both for the bond of heritable sums, and also of moveable sums, whereto she was made assignee by her husband, notwithstanding that the Debtors *alleged*, That the same assignation made by the husband to the wife, could not be sustained to produce this action, being made to prejudice the heir and executors of the defunct ; and that this assignation could not be respected in their prejudice, but for the relict's own part, or as a testament ; which allegiance was repelled, seeing it was not alleged, that the assignation was made on the maker's death-bed ; neither was it ever alleged to be revocate by the husband before his decease, after the making thereof ; neither was the assignation quarrelled, either by the heir or executors of the defunct, and it was not competent to the Debtors, to quarrel the same upon this ground.

No 29.

Found not competent for debtors to object to an assignation granted upon death-bed, by a defunct to his wife, of certain sums, both heritable and moveable, as being in prejudice of the heir and executor, when they themselves did not challenge it.

Clerk, Scot.

*Fol. Dic. v. I. p. 213. Durie, p. 346.*