

1627. *January 11.*PATON *against* BARCLAY.

IN a suspension betwixt Paton and Barclay, wherco Paton being charged to pay 300 merks, conform to his bond, whereto Barclay was made assignee by the creditor to whom the bond was made; the reason was, that the cedent being this suspender's tenant, in some lands occupied by him, for the which he was debtor to the suspender in as many farms as, being liquidate, extended to the sum contained in the said bond, and which farms were owing to him at the time of the making of the said assignation; likeas, since that assignation, he hath recovered decret against the cedent, his tenant, for paying of the same, and liquidating the prices thereof, which ought to compensate against the assignee, as it would have compensated against the cedent's self if he had been charger.—THE LORDS found this compensation relevant against the assignee, as well as against the cedent; albeit the decret against the cedent, which both found the cedent his debtor, and also liquidate the debt, was posterior to the assignation made to this charger, who was a true creditor to the cedent, and that it was made for satisfying of his just debt; and albeit the assignation preceded the said decret, seeing the decret was obtained by the master against his tenant for the farm of the ground, which was a debt for some years duties preceding the assignation made to the charger, owing to the master, albeit the same was not decerned before the assignation, but thereafter, which was sustained, seeing nothing was alleged against the debt owing by the cedent to the suspender, contained in the said decret.

Act. *Mowat.*Alt. *Lawrie.*Clerk, *Hay.**Fol. Dic. v. 1. p. 161. Durie, p. 255.*1633. *February 14.*KEITH *against* HERIOT.

NATHANIEL KEITH being addebted to Heriot in the sum of 1000 merks, by heritable bond, which bore infestment to be given by the said debtor, of an annualrent redeemable, and payment of the principal sum not to be made, but upon requisition to be made, on the part of the debtor to his creditor, upon 40 days warning to receive the same; and, thereafter, the said Nathaniel Heriot being debtor to Nathaniel Keith in some sums, by bonds conceived only in payment of a moveable sum; the said Nathaniel Keith pursues Heriot, and Alexander Heriot, his assignee made to the said heritable bond, to hear him give an acquittance of the said heritable bond, as compensated with the other bonds foresaid, granted to him by the said Heriot. In which action it was found, that this compensation was as receivable against the assignee, as against the cedent: It was also found, that this moveable bond, of this tenor, not bear-

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No 50.

A master being pursued by a tenant's onerous assignee, his compensation was sustained, though upon a decree against the cedent posterior to the assignation, the decree being for bygone farms, long before the assignation.

No 51.

An heritable bond, not payable except on requisition, was conveyed to an assignee. It was found, that this bond might be compensated by the sum in a moveable bond due by the cedent.

No 51. ing any clause of annualrent, ought to compensate the other bond, albeit heritable, and bearing infeftment and premonition, which the said debtor was astricted to make to the said creditor before he loosed the sum; and so thereby the defender *alleged*, that he could not compensate, seeing he could not pay the sum, but upon requisition first made to the creditor to receive the same upon 40 days, and which not being done, far less was this compensation by pursuit now receivable, where the party was not charging this pursuer for that sum, which was repelled.

Act. *Mowat.*Alt. *Burnet.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 161. Durie, p. 672.*

1662. February. RELICT of INGLIS *against* The EARL of MURRAY.

No 52.

A relict, executrix of her husband, pursued a debtor of her husband. His plea of compensation founded on a debt due by the defunct, assigned, but not intimated, before the pursuit, was repelled.

THE Relict of umquhile Robert Inglis merchant, being creditrix by her contract of marriage, confirmed executrix to her husband; and, in the inventory, having given up a debt owing to him by the Earl of Murray, she gives power to ——— Crawford to pursue the Earl for payment. It was *excepted*, That the defender ought to have compensation; because, before the intending of this pursuit, the defunct was debtor to the defender in a sum of money assigned to him by Dr Leighton, now bishop in Dumblane. It was *answered, 1mo, Non relevat*, unless the assignation had been intimate, before the intending of the cause, to the executors or nearest of kin to the said Robert Inglis. *2do*, Though it had been intimate, yet it could give no ground of compensation; because the relict, by her contract, was a privileged creditrix before any other; and, in prejudice of her privilege, no assignation could be granted or received, to take away that preference from her which the law gave her.

THE LORDS repelled the allegiance.

Gilmour, No 28. p. 22.

1674. November 11. HAMILTON *against* The EARL of KINGHORN.

No 53.

A party having used expressions inducing an assignee to a debt due by him, to suppose he meant to hold himself to be the assignee's debtor, without mention-

JAMES MAULD of Melgum having assigned to James Hamilton two bonds, and he having intimate his assignation to the E. of Kinghorn, granter of the same, did thereafter write to the said Earl, shewing him that he had use for the sums contained in the said bouds; and that he desired a course might be taken to pay the same: And, in answer to his letter, the said Earl did write and subscribe a postscript upon a letter written to him by the said James Mauld to that purpose, that the said James Mauld had assured him, that he had made the assignation foresaid upon assurance that my Lord should not be troubled to pay