

that, by the testator's own count-book, the debt is paid him in his lifetime, which is equivalent to a discharge ;

REPLIED,—That though in other cases, *privata scriptura facit fidem contra scribentem*, yet to force the executor to produce the testator's count-book, to take away a debt constituted by writ, were hard, he never being factor, merchant, &c. ; for the case was put as, if the testator had left a discharge subscribed, beside himself, undelivered, can any in reason thereon think the debt is discharged? Notwithstanding whereof it was found that, by the testator's count-book, the debt was discharged, though the bond was not retired.

Act. Nisbet. *Alt.* Lockhart.

MS. folio 51.

1662. *December 3.* LADY EDNEM, *against* _____.

IN this case found, that a pension is not a real right, so as to tie a singular successor in payment thereof.

Act. Lockhart.

MS. folio 52.

1662. *December 3.* SINCLAR *against* SPOTISWOOD.

THE case was, Peirsone having wadset his lands to Hamilton ; and finding that the wadset-granter was inhibited before his right, by a lawful creditor ; he transacts with the said creditor, and takes assignation to the bond, and hail diligences raised thereon ; and then charges Duncan, who is cautioner for the debtor in the bond, to pay the debt : who, suspending that he was willing to pay the debt, the assignee giving him a right to the bond, and hail diligences used thereon, for his relief against the principal ;

ANSWER,—He could not assign him to the inhibition, because it might then affect his own right of wadset made to him thereafter.

The Lords found he behoved to assign, or else to discharge the cautioner of the debt ; and that the charger had a design to cheat the suspender of his right.

Act. Spotswood. *Alt.* Sinclair.

MS. folio 52.

1662. *December 3.* _____ *against* _____

FOUND, in a case betwixt two donators, that the first expedite gift, with the first summons, raised, executed, and called, ought to have the preference of the other, though they were both ready to debate on one day.

Dinmuire. Stewart.

MS. folio 52.