

1663. *January 20.* PATRICK NICOLL *against* SIR ALEXANDER HOPE.

IN a molestation pursued by Patrick Nicoll against Sir Alexander Hope, wherein he craved that he might demolish a dike bigged by Sir Alexander upon his property; EXCEPTED, Grant it were bigged on your property, yet I offer me to prove, that by a condescendence betwixt your authors and me, it was agreed, the dike should be the march betwixt us, both having lands of Granton; by virtue whereof, that dike has stood as march betwixt [us] these 20 years past, till now.

ALLEGED, He behoved to condescend on the manner of probation of this agreement. He offered to prove it by witnesses; as being enough, after so long possession. URGED, Such a verbal condescendence betwixt the pursuer's author and this defender is not sufficient in law to take away any one's heritage, without writ; the pursuer standing infest in the lands of Granton, specially condescended on and bounded in his infestments. Then contended, a verbal condescendence on a dike to be the march betwixt the two Grantons, clad with 20 years possession but interruption, was probable *prout de jure*. The Lords found that condescendence not probable by witnesses, but only writ, unless it were alleged that the ground whereon the dike is bigged was contraverted before by the heritors of the two Grantons.

*Act.* Cunyghame. *Alt.* Harper.

*MS. folio 52.*

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1663. *January 24.* ——— *against* ———.

A SUM of money being resting by A to B, B assigns to C; and the creditor B being owing a like sum to D, the same is assigned by D to A. C the assignee, charging A to pay the sum assigned to him by B, A propones an exception of compensation of the like sum owing by B, his cedent, to D, and assigned by D to him, before the assignation made by B to the charger; which, being so prior to the pursuer's right, must compensate the assignee as well as the cedent.

ANSWERED,—*Non relevat* to say the assignation was prior, unless he also say the same was intimated to my cedent before my assignation. This the Lords found relevant, and repelled the exception of compensation foresaid. This interlocutor was stopped by a bill, on very good reason.

*Act.* Wallace. *Alt.* Lockhart.

*MS. folio 52.*

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1663. *January 25.* ——— *against* ———.

A WOMAN being convened to pay a debt, conform to a bond granted by her and her husband; EXCEPTED, The bond is null *quoad eam*, being then clad with a husband.