

*judicium.* TRIPLIED, He could never be heard to deny that assignation, seeing *Imo*, The second assignation taken in 1648, proports the same to have been, and to have been lost. *2do*, His reason of a suspension was a sufficient acknowledgment of the assignation which they produce, together with sundry minutes in a dispute that followed thereon in 1635. QUADRUPLIED, That the said assignation in 1648, and the raising of suspension in 1635, will be good adminicles for making up the said assignation in an action for proving the tenor of it; but that it should prejudge the debtor now when the same cannot be shown, is against all reason; for *esto* it were produced it might be null for many reasons; it might be so questionable that it would not be sustained for the ground of a pursuit or charge; or *dato* it had been a valid assignation, yet it might have been given back to the cedent, and he retrocessed.

They were to have the Lords' answer upon this. See something like in Papon's *arreists, Lib. 10, T. 5, des payments Cap. 4to.* where a man craving to be reponed against the discharge, and in the pursuit the discharge being found to be lost, the libel was found no acknowledgment of the acquittance. *Vide supra, 28th January, 1671, Gibsone.*

*Advocates' MS. No. 120, folio 88.*

1671. *February 2.*

Anent SUMMONSES.

A SUMMONS must be executed within year and day after the same is raised, else that summons is null. Being executed, if year and day elapse without doing any thing thereon, the same is said to sleep, and we cannot insist upon it without it be again wakened; but a continuation of the summons, though ten years after the raising of the first summons, will be reputed equivalent to a wakening; as the Lords have oft found. *See Haddington, 13th December, 1609, Boig against Home.*

*Advocates' MS. No. 121, folio 88.*

1671. *February 2.* The EARL of ARGYLE *against* GEORGE CABELL.

THE Earl pursues the Sheriff, as having been chamberlain to his father the space of divers years, to count for his intromission with the rents of his lands.

Against which it was ALLEGED, That he could not count for his intromission these years, in respect he had a general discharge of the then Marquis, posterior to all the intromissions libelled, viz. *vide in anno 1649*, wherein this very pursuer is a witness.

To which it was REPLIED, That the sheriff was *in mala fide* to take a discharge of the then Marquis this pursuer's father, because before the same he was involved in sundry heinous, enormous, and atrocious acts of treason, for which