that, at the time of his granting that general discharge, the said legacy was neither *actum, tractatum,* nor *cogitatum* among them; and so could not be included.

Newton would not sustain that as relevant and sufficient *per se,*—that the said legacy acclaimed was not then mentioned or communed on; because it might have been paid before that time: and therefore he found, that we behoved farther to refer to her oath likewise, that the said legacy, as it was not then spoken of, so it was neither paid by her, nor allowed at that time, nor at any time before. *Vol. I. Page 50.*

1679. *July* 18. SELKRIG *against* MACFARLANE.

SELKRIG against George Macfarlane's son. There is a bond bearing registration: it is assigned, the assignation is intimated, thereafter the cedent dies; after his death the assignee registrates the writ; the registration is quarrelled as null, the clause of registration being of the nature of a mandate, and *mortuo mandatore expirat mandatum*; and that the cedent's name, who is dead, and not the assignee's, was in the bond, and so it could not be registrate at the dead man's instance.

REPLIED,—The assignation being intimated before the cedent's death, puts the assignee fully in the cedent's place.

This being reported to the Lords, they found, that it might be summarily registrate at the assignee's instance. Some formalists looked upon this as too great a dispensation and relaxation of form; but there is no material iniquity in it. See the Books of Sederunt, 9th July 1661. *Vol. I. Page 51.*

1679. *July* 19. SIR WILLIAM PURVIS *against* MURRAY of LIVISTON, and MR JOHN ELLIS, Advocate, his Curator.

IN a process at Sir William Purvis's instance, as Collector of the Wards, against Murray of Liviston, and Mr John Ellis, advocate, his curator, for payment of £400 Scots, as the taxed avail of his marriage:

ALLEGED,—The words in Liviston's charter, *quando contigerit,* signify when he shall be married, at least when he enters to his lands, at the age of twenty-one years; and so he cannot be liable to pay it sooner.

REPLIED,—These words in law import, that the avail of the marriage is payable as soon as he is marriageable; which is in a man at fourteen, and he is eighteen years old. And after fourteen the superior may offer a woman to his ward-vassal in marriage: *ergo,* the single is then due; *et cessit et venit dies.*

The Lords found it due immediately after fourteen. But this wants not difficulty, and was an interlocutor upon collusion betwixt the parties.

Vol. I. Page 51.

1679. *July* 23. MURDOCH *against* THOMAS INGLIS.

MURDOCH, an apothecary, pursues Thomas Inglis, merchant, to remove from a shop in Edinburgh.

ALLEGED,—He cannot remove, because Murdoch is but a party owner,—one

Johnston has the other half of the booth; and who consented that he should not flit, providing that he paid his maill, and did not seek another shop.

REPLIED,—Murdoch was only in use to set, and Inglis had taken allenarly from him; and so, unless he had promised, Johnston's promise was not relevant.

The Lords found Inglis bruiked *pro indiviso*; and so, Johnston having consented to his sitting, he could not be removed for this year. See Craig, *Lib.* 2, *Dieg.* 9, *de Migrando.* *Vol. I. Page* 51.

1679. *July* 23. SETON *against* DUNBAR of BLAIRIE.

SETON pursues Dunbar of Blairie for payment of a debt. ALLEGED,—He had accepted a precept for the debt upon Blairie's chamberlain. REPLIED,—*Non relevat;* unless he say that either I got payment by it, or that I accepted it in satisfaction; otherwise law presumes it, like an assignation, to have been only in corroboration. See *November* 1673, *Lauder.*

My Lord Newton inclined to find, that a creditor's accepting a precept from a debtor, upon the debtor's chamberlain or mother, exonered the drawer of the precept, albeit the receiver got not payment, unless he protested it for not acceptance, or, being accepted, if he did not diligence, but suffered the acceptor, on whom it was drawn, to turn bankrupt and insolvent; and found, that in neither of these two cases could the receiver of the precept recur against the drawer; but it was presumed to be taken in satisfaction. Yet thir precepts seem not to be like the case of bills of exchange among merchants, nor to be regulated in that manner, as they are. See 17*th February* 1662, *Wright.*
Vol. I. Page 52.

1678 *and* 1679. DAVID JACK *against* CLAUD MUIRHEAD.

1678. *February* 14.—DAVID Jack pursues reduction of a comprising led against him, as lawfully charged to enter heir to his father, and of the grounds of it, against Clerk and Muirheads. The first reason of reduction was,—One of the bonds was null, because subscribed by two notaries before three witnesses only. The Lords repelled this, because there were four inserted and designed in the body. 2*do*, That, in the decreet *cognitionis causa*, the procurator's name was blank. This the Lords regarded not. 3*tio*, That the charge to enter was wrong signetted. This they also rejected. 4*to*, That a sheet in the executions, and another in the comprising, were cutted and falsified. Before answer to this, the Lords ordained John Hamilton, writer of the apprising, to be examined. *Vide* 12*th December* 1678, thir same parties.
Advocates' MS. No. 726, *folio* 320.

1678. *December* 12.—DAVID Jack against Claud Muirhead,—*vide* 14th Feb. 1678, [No. 726.] John Hamilton, the writer of the apprising, being examined, and having in some measure confessed the cutting and altering of the two sheets,—the one in the execution and the other in the apprising,—in respect a wrong market-cross was inserted; the Lords first inclined to restrict the comprising to the precise sum for which it was led, cutting off penalties and sheriff-fees, and to make it redeemable, though the legal was expired. But the parties not agree-