

1682. *March.* SHEWAL *against* RITCHIE and RIDE.

IN the competition betwixt [an assignee] and arrester, whose arrestment was posterior to the intimation of the assignation; in respect the instrument of intimation did not bear that a copy was left at the dwelling-house, or delivered to any servant, &c.

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1682. *March.* PETRICK RED *against* BAILIE CRAWFURD.

FOUND, that one whose name is used in trust by a third party is not, *hoc ipso*, liable to do diligence, unless by a clause he be obliged thereto.

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1682. *March.* SINCLAIR *against* SINCLAIR.

A MOTHER having lent money, and taken the bond payable to her second son, with a provision, that, in case she stood in need of the money, she should have power to uplift and dispoise on it;—the Lords found she could not discharge the debt for mere love and favour, or dispoise on it gratuitously.

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1682. *March.* DALMAHOY *against* HUGH MAXWELL.

MANY of the Lords inclined to think, that a person in prison, having corroborated a bond and decret, could not quarrel that decret upon iniquity: but that point was waved upon another allegiance of transaction by abatement.

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1682. *March.* CAPTAIN ALISON *against* LORD DUMFRIES; and BALGONY *against* CLERK.

THE Earl of Dumfries, being pursued on his bond of 5000 merks, assigned; proponed compensation on a holograph note due by the cedent, to which the defender acquired right since the cedent's death. Answered, The pursuer had raised a process for payment of the bond before the defender's right to the holograph note. Replied, The assignation, not being intimated in the cedent's lifetime, the bond assigned remained *in bonis defuncti*, so as the assignee could not pursue thereon till he confirmed the same; and the defender's ground of compensation, though acquired after the commencing of the pursuer's action, must be sustained, since it was before his confirmation of the subject assigned.