

up, in his own name, a blank moveable bond he found lying by the defunct and omitted out of the testament confirmed by him; the defunct's daughter did afterwards confirm the said bond, as executor *ad omissa*: The son's assignee pursued the debtor for payment. Alleged for the debtor, That the sum contained in the blank bond was *in bonis defuncti*; and, 2. Alleged for the sister, executor *ad omissa*, That the cedent had lost his interest in the sum, by *dolosè* omitting the same out of the principal confirmed testament. Answered for the pursuer: 1. 'Tis denied that the bond was blank in the defunct's custody; 2. The son, as executor and universal legatar, had right thereto; 3. Though omissions in executors, who have a naked office, are punished by the custom of the commissaries, yet such omissions, in persons who have a positive interest of universal legacy, or legitime, &c. are not presumed fraudulent, but to happen through negligence. The Lords ordained trial to be taken if the bond was found lying blank by the defunct; but found, that the son, the cedent, and his assignee, would, by reason of the universal legacy, have right to the sum, though not confirmed.

Page 129, No. 472, [1st.]

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1687. January. MR ALEXANDER COLVIL *against* WILLIAM HALY.

IN the reduction and improbation, at the instance of Mr Alexander Colvil against William Haly, of writs granted to the defender by Jean Colvil;—Alleged for the defender, That Jean Colvil being author condescended on, the pursuer ought to have cited her, or her nearest of kin, if she be dead; 2. He could not produce writs granted by Jean; because the pursuer libelled or instructed no right, in his favours, flowing from her by disposition or succession; 3. The defender is only obliged to condescend on the dates of decreets before the Lords, and not produce them, or the grounds and warrants; and extracts of registrate writs must satisfy the production, and the pursuer must seek the registers for the principals. The Lords, *ex gratia*, allowed Jean Colvil, or her nearest of kin, to be cited *cum processu*, in respect the defender was an agent, who had been vexatious to the pursuer; and they sustained [the second] and third defences as relevant.

Page 158, No. 569.

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1687. January. FORREST *against* JOHN CALLENDER.

MR Alexander Higgins having disposed his lands of Craigforth to John Callender, whereupon resignation was made in exchequer, after one Forrest had been infest base in an annualrent out of these lands; Forrest raised a pointing of the ground, and, before decret thereon, John Callender presented a signature to the exchequer, and infestment followed after the decret of pointing, which was obtained immediately after the first term of payment of annualrent. In a competition betwixt Callender and Forrest,—alleged for Callender, That he having presented a signature before the other's decret, the infestment ought to be drawn back to operate from the date of presenting the signature, seeing he could do no diligence by a charge against the king; and applications to the exchequer (which is a public judicatory,) could not be disappointed, more than a prior action before the Lords by a posterior first consummated before an in-

ferior judge. Answered, Whatever might be pretended as to the presenting signatures upon legal diligences, yet any superior may not only delay, but refuse voluntary rights; 2. By constant practice, the first infetment upon the last signature is preferable; 3. A right may be rendered public, either by confirmation or possession, or decret of declarator, or poiding of the ground, according to the nature of the right; and Forrest not only raised his summons, (which had been sufficient,) but recovered decret before Callender's infetment. The Lords preferred Forrest, as having the first public right. And, in a competition here, between two processes of poiding the ground, the Lords preferred the first citation. *Vide* No. 608, [John Callender against Creditors of Craigforth, February 1687.] *Page* 169, No. 606.

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1687. *January.* SOWTON *against* SMEATON, &c.

FOUND, that where a creditor's money is affected by arrestments, he may raise a multiplepoiding in the debtor's name, and the debtor cannot disclaim it. *Page* 213, No. 754.

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1687. *January.* ASHURT *against* CLIFTONHALL.

THE Lords sustained a holograph rental unsubscribed, as the constitution of the rental against his heirs. *Page* 225, No. 802.

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1687. *January.* HERMISHEILS *against* The LAIRD of DALZIEL.

FOUND that a writ, whereof the margin was only signed by the principal debtor, and not by the cautioner, could not be quarrelled, as defective upon that head, by the cautioner. And though the margin have no witnesses, yet the subscription thereof may be proven by the pursuer's oath, even in an improbation. *Vide* No. 575, [Andrew Johnstoun against Johnstoun of Lockerbie, February 1688.] *Page* 253, No. 895.

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1687. *January.* ACHMOWLY *against* DOROTHY BUCHANAN.

AN assignation by a wife clothed with a husband, consisting of two sheets, not side-signed by the cedent, was sustained in respect of her judicial ratification in Ireland before the mayor, written upon the first sheet, though the said ratification was only signed by the mayor, and not the party. *Vide* No. 118, [Auchinmouly against Dorothy Buchannan, January 1687.] *Page* 253, No. 896.