

1687. *January 29.*JAMES M'ILWRAITH *against* RICE and LESSLIS.

HE craved the process may go on in his name as assignee by James Dale, now dead, in whose name it was raised; in regard the assignation was intimated at the market cross before his decease. *Alleged*, He must transfer the process, unless it had been intimated personally, or judicially produced.—THE LORDS, on Redford's report, found it behoved to be transferred. But, on a bill, they allowed him a commission to examine witnesses, being old, on his reason of reduction *ex capite lecti*; and the defenders also, on their bill, were allowed to prove *liege proustie*; and that the granter came to kirk and market after his subscribing the disposition craved to be reduced.

*Fol. Dic. v. 1. p. 62. Fountainball, v. 1. p. 444.*

No 28.

An assignation intimated at market cross, the cedent dying, must be transferred.

1693. *February 16.*CHANNELL *against* SETON.

THE debate between Anne Channell, relict of Mr Alexander Seton minister at Lithgow, against Sir Walter Seton, was advised; and the LORDS found the registration of the bond by an assignee after the cedent's death was informal, though the debtor was alive; because the registration was a decret of consent, which required *actor et reus*, and here the *actor* was dead, and so there could be no decret at his instance; and it was not sufficient, that it was not done by an assignee who had not intimate his assignation in the cedent's life; for though it be payable to the creditor, and his assignee, so it is likewise to his heirs and executors, and yet, they could not summarly registrate, so that the mandate died here, both *morte mandantis et mandatarii*; though it was argued, that the procurator was the *mandatarius* here and not the creditor. (THE LORDS had found the contrary between Reid and Mr James Deas advocate:\* But there he had paid annual-rents to the assignee :) But, not to cast the assignee too far back, they sustained this charge as a libel; and ordained the defender to answer thereto, but so as to get terms to prove, and not to be put to verify instantly as in a suspension: And for proving, that there could not be summar execution by registration, where either the granter or receiver was dead, the following decisions were cited out of Durie, p. 102. 27th January 1624, Inglis, *voce* PROCESS; and 30th of July 1625, Lady Stonyhill, Durie, p. 185. *voce* TUTOR and PUPIL; 16th March 1627, Bruce, Durie, p. 291. *voce* SUMMAR DILIGENCE; 1st December 1630, Chappeltown, Durie, p. 544. *voce* SUMMAR DILIGENCE; 19th March 1631, Crighton, Durie, p. 584. *voce* SUMMAR DILIGENCE; 15th January 1635, Shank, Durie, p. 742. *voce* SUMMAR DILIGENCE; 12th February 1635, Brown, Durie, p. 754. *voce* SUMMAR DILIGENCE.

Some proposed, that it would be a great ease to the lieges, and dispatch of justice, to make some regulation for the future, that execution may summarly pass at the assignee's instance, though the creditor be dead, especially now since the act of Parliament 1690, not requiring confirmation of special assignations.

*Fol. Dic. v. 1. p. 62. Fountainball, v. 1. p. 561.*

No 29.

The registration of a bond by an assignee after the cedent's death, is informal.

\* Fount. v. 1. p. 556. *voce* SUMMAR PROCESS.