

in the possession, they finding caution to refund *in eventu* to any who shall be found to have best right. *Vol. I. page 519.*

1692. *November 18.* IRELAND and MARTINE *against* THOMAS BEATON of Neither-tarbet.

BEATON being debtor by a bond, blank in the creditor's name, to one Hendry Bonsie, he acquires an assignation to an equivalent debt of Bonsie's, and thereon charges him with horning; he thereon fills up the name of one Ireland in Beaton's blank-bond; and Beaton being now charged by Ireland, he suspends on this reason, that Bonsie, to whom I gave that bond blank, and who filled up your name in it, was debtor to me before filling up of your name, and was charged at my instance; and so there being *a concursus debiti et crediti in eadem persona*, I must have compensation.

ANSWERED.—*Eo ipso* he had granted a blank-bond, he renounced compensation; and that Stair, *Tit.* Assignations, shewed that to be the design of granting them for the utility and dispatch of commerce. The Lords sustained Beaton's reason of suspension, founded on the compensation, he proving that he charged Bonsie, upon his bond, prior to the filling up of Ireland's name, by Bonsie in the blank-bond delivered by Beaton to Bonsie, or prior to the intimation of it, or prior to Ireland's showing Beaton that his name was filled up in his bond; Beaton likewise proving that Bonsie was bankrupt and insolvent at the time of his filling up Ireland's name in the blank-bond. For being then charged with horning at Beaton's instance, as he could not assign in prejudice of his diligence, so neither could he fill up Ireland's name to prejudge him of his compensation, contrary to the act of Parliament 1621, against fraudulent rights, and contrary to the *actio Pauliana* in the common law; seeing the filling up of the name was one equivalent transmission to an assignation.

For the like case, see *Stair*, 11th November, and 1st December, 1665, *Telfer*; and 27th February, 1668, *Henderson*; 19th December, 1676, and 17th January, 1677, *Grant*. *Vol. I. page 520.*

1692. *November 22.* SIR ALEXANDER COKBURN of Lanton *against* COKBURN of that Ilk.

SIR ALEXANDER COKBURN of Lanton having charged Cokburn of that Ilk for L.100 Scots, as his proportion of Lanton's commissioner-fees for Berwickshire to the Parliament; Cokburn craved compensation on sundry debts he had paid for him.

ANSWERED.—They were *debitum fundi*, and not to be compensated with personal debts. The Lords found it compensable, and ordained them to count and reckon. *Vol. I. page 520.*