

1712. *June 11.* The creditors of Sir ROBERT FORBES, Advocate, *against* WILLIAM and ROBERT BLACKWOODS, Merchants in Edinburgh.

KING CHARLES the Second, as heir to the last Duke of Lennox, (who was heritable Lord High Admiral of Scotland;) having conveyed the office to the Duke of Lennox and Ritchmond that now is, reserving the liferent thereof to the Duke of York, who was afterwards King James the Seventh; King William, as successor to King James, gave a commission to Sir Archibald Sinclair to be Judge Admiral *durante beneplacito*; who, in anno 1699, resigned in favours of Sir Robert Forbes, Advocate, upon Sir Robert's granting an assignation in favours of Sir Robert Sinclair of Longformacus, of the fee or pension of one hundred pound Sterling, due to the Judge of Admiralty during Sir Archibald's life-time, and during Sir Robert Forbes's enjoying the office jointly; that is, while Sir Archibald lived, and Sir Robert Forbes enjoyed the office, Sir Robert Sinclair should have right to the said annual pension. In the year 1702, the Duke of Lennox getting full right to the office, through King James's decease, gave a commission to Mr. James Graham, Advocate, to be Judge-Admiral; whereby Sir Robert Forbes's former right during pleasure ceased, and he procured himself to be assumed as conjunct in the office with Mr. Graham. The whole salary, from Mr. Graham's admission till the Union, being unpaid; there arose a competition for the half thereof, betwixt the creditors of Sir Robert Forbes and William and Robert Blackwoods, merchants in Edinburgh, as having right by assignation from Sir Robert Sinclair.

The creditors of Sir Robert Forbes, would have his assignation to the salary to be interpreted *civiliter*, according to the nature of the thing; viz. so long as he should enjoy the office, by virtue of the gift procured upon Sir Archibald's demission, and no longer; L. 1. §. 2. ff. *De Condict. ob non caus.*; that is, so long as he enjoyed the office resigned, which he was then in possession of: for it can never be imagined that Sir Robert was to give the salary during his enjoyment of the office, which, after extinction of his former right *ob defectum juris* in the constituent, he *tanquam quilibet* procured from the Duke of Lennox; he being under no obligation to procure the annexed salary in favours of Sir Robert Sinclair; consequently the assignee's pretensions, once cut off, could not revive by the subsequent gift to the cedent.

ANSWERED for William and Robert Blackwoods,—By the express words of the assignation, the cedent was to have the salary while Sir Archibald lived and Sir Robert enjoyed the office, without distinguishing the title he enjoyed it by. Sir Archibald's demission was the only cause of the assignation which brought Sir Robert into the office, and entitled him to claim the favour of a new gift. And it is hard to reduce restrictive interpretations of an absolutely general clause, where, had the parties designed a restriction, they could not have failed to express it by these words, "during Sir Archibald's life, and Sir Robert Forbes's enjoying the commission then procured;" seeing that was obviously precarious, and revocable. 2. The assignation to the salary can no more be affected by Sir Robert Forbes's creditors, than they could repete money given for Sir Archibald's demission, upon the turning out Sir Robert Forbes: *ubi enim eadem ratio, idem jus esse debet.* 3. Assignations during life are found still to subsist, though the cause

for which they were granted should cease. *July 16, 1678, Wier against the Earl of Callender*, and in the case of the *Earl of Wintoun against the Lord Pitmedden*.

The Lords found, that Sir Robert Forbes's assignation to Sir Robert Sinclair, of the fee and pension libelled, did entitle the assignee to it, not only during the cedent's possession by virtue of the gift on Sir Archibald Sinclair's demission, but also during the cedent's enjoyment of the office by the new gift from the Duke of Lennox : because the first gift, which Sir Archibald Sinclair was not bound to warrant, being only *durante beneplacito*, and the assignment to the pension not expressly restricted to the time that the cedent enjoyed the office by virtue thereof ; it is understood to be effectual, so long as he enjoyed the said office *quocunque titulo*.

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1711. *June 15.* JOHN EWING, Writer to the Signet, *against* WILLIAM ROWAN, Merchant in Greenock.

JOHN EWING, husband to Margaret Rowan, heir of tailyie and provision to John Rowan of Bedland, her father ; having, as assignee to several moveable debts owing by John Rowan, pursued William Rowan for payment, upon the passive title of vitious intromission with John Rowan's moveable effects : the Lords found, that Margaret Rowan, being heir of tailyie to the debtor, the pursuer could not insist to make the defender liable *passivè*, but only *in valorem* of his intromission. Albeit an intromitter with a defunct's moveable effects, is universally liable to his creditors ; and the pursuer had action competent to him, for relief out of the defunct's executry.

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1711. *July 17.* The MAGISTRATES OF GLASGOW, and their STENT-MASTERS, *against* ROBERT SANDERS of Aldhouse, Printer in Glasgow.

KING CHARLES the Second, having, by his gift and patent under the great seal, May 12, 1671, granted to Andrew Anderson, his partners, substitutes, and assignees, the sole privilege of printing and causing to be printed and published, all manner of books, learned or vulgar, within Scotland, together with the direction and regulation of all other presses there, and an express immunity and exemption from taxations, stents, annuities, and impositions upon the said office or trade to him and his foresaids, for the space of forty-one years after his entry thereto : Andrew Anderson assumed four printers as his co-partners in the art of printing, and communicated to them the privilege of the gift. Robert Sanders