

No 8. action cannot be taken from him, unless the assignee will qualify some fault, some negligence of the pursuer's, which yet cannot be done, by reason that the back-bond truly had fallen aside long before his time; and he was no way negligent as to that matter. And if they ascribe this effect to the pursuer's inculpable ignorance, then it must follow in general, ' That a debtor can never obtain a *conductio indebiti*, if the cedent became insolvent any time after the payment, of which repetition is sought;' a position that is apprehended to be without any foundation in law: For, as inculpable ignorance is never reckoned sufficient to bear out an action of damages for reparation; as little to bear out an exception of damages, in order to take away an action that is otherwise competent.

Replied to this last; It is sufficient to qualify that the loss happened through the ignorance and error of this pursuer: For, since one of them must bear the loss, it is more equitable that it fall upon the pursuer, who was in an error, than the defender who was in none; and no body ought to be prejudged by another's errors.

THE LORDS sustained the defence, That after the assignation to the Lord Halcraig, the late Duke of Argyle did corroborate the bond assigned in the person of the said Lord Halcraig, relevant to assoilzie the defender from any repetition or extinction.

Fol. Dic. v. I. p. 187. Rem. Dec. v. I. No 39. p. 78.

No 9.

1733. July 26. STIRLING of Northwoodside *against* EARL of LAUDERDALE.

Condictio indebiti sustained to one who had paid *errore juris*.

Fol. Dic. v. I. p. 187.

* * * See The particulars of this case in the APPENDIX.

No 10.

A sum due by a writer's account, was paid after his death to the husband of his daughter, his executrix. Afterwards a receipt for part of the sum was found. The daughter pleaded against repe-

1745. June 24. The EARL of PETERBOROUGH *against* MRS MURRAY.

UPON the death of Hugh Sommerville, writer to the signet, who had been doer for the Lord Mordaunt, now Earl of Peterborough, there was a sum, as the balance due to him upon his accounts paid in to Mr James Geddes, and Mr Hugh Murray, his daughters' husbands, without this particular being confirmed; but after their confirmation as nearest of kin, which the Lords have since found determined the interest of parties with regard to the whole executry.

Afterwards there was found a receipt of Mr Sommerville's for L. 50 Sterling from my Lord's factor, to be employed for his Lordship's law affairs, in so far as not already employed, and for this receipt no credit had been given in the account.