

1627. *December 11 and 12.* FALCONER *against* BEATOUNE.

AN assignation made by a Scots merchant, who had dwelt long in Germany, is quarrelled by the debtors, who were pursued for the sum. They alleged the assignation was null, as wanting witnesses;—to the which it was alleged, the assignation was made in Dutch, after the form used in Germany, where the cedent dwelt. The Lords sustained the assignation; the pursuer either proving the custom of the country, or finding caution to warrant the debtor at all hands. 11th *December* 1627.—

In the same case, it was alleged for Beatoune, that the debt contained in his father's bond, which was heritable, and for which he was pursued as heir to his father, by the said Falconer, heir to the said assignee, could not appertain to the assignee's heir, but to her executor; because, although the bond be heritable, yet the assignation made it moveable, and, consequently, to appertain to the executors. The Lords repell the allegiance, and find, that the assignation does not alter the nature of the bond.—12th *December* 1627, *ut supra*; and 18th *March* 1629, *Cant against Edgar*.

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1627. *December 13.* HEBBURN *against* LEITH.

A BOND vitiated, by some appearance, in the sum, is ordained to be proven some other adminicle.

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1627. *December 13.* RAE *against* The BAILIE of LANERICK.

THE bailies of Lanerick being charged to enter one heir to a tenement of land, who was served and retoured heir to his goodsir, of the said tenement, suspend the charge; and a third party, compearing for his interest in the suspension, alleges, That the bailies cannot enter him that charged to the said tenement, because the charger's father was infeft in the said tenement, and had disposed the same to the *excipient*, who stood presently infeft therein, so that the service was erroneous in serving him to his goodsir, and missing his father, who was infeft. The Lords found the letters orderly proceeded against the bailies, upon the retour, and ordained them to enter the charger *salvo jure cuiuslibet*. And if the party who compeared for his interest, was pursued or troubled, he might defend upon his own right.

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1627. *December 13.* ANDERSON *against* GUDLENE.

A DECREET given by the commissary of St Andrew's, in time of vacance, with-