

by obtaining himself executor confirmed, to the effect he might get payment of his just debt, and that he had accordingly obtained payment, therefore he was preferred without division with the rest.

*Act.* ———. *Alt.* Burnet. Hay, *Clerk.* *Vid.* 13th July, 1632, Pollock *against* Fairholm; 7th January, 1624, Shaw *against* Gray; and 26th January, 1628, Adie.

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1628. *February* 28. MAULD *against* L. MATHERS.

IN a pursuit of letters conform, Mauld *against* Mathers, Mauld being constituted assignee to a pension granted to Andrew Mauld, father to the assignee, which Andrew had the said pension from the E. Marishal, *cum potestate transferendi etiam in articulo mortis*;—the Lords sustained this action at the assignee's instance, being now pursued after the cedent's decease, the principal pensioner; albeit it was alleged, that the cedent being now dead, that the translation was null; seeing the cedent remained still in possession, notwithstanding of the translation, by uptaking thereof, and giving acquittances thereon, in his own name; so that the translation took never effect in the maker's lifetime, whereby it became ineffectual. This allegiance was repelled, and the action and translation sustained; for this summons of letters conform was raised before the cedent's decease, and thereby the assignation was intimate; whereas, for want of intimation, the contrary was found before, in the action Douglas *against* the B. Aberdeen. *De quo vid. penult* June, 1622.

*Act.* Oliphant. *Alt.* Mowat. 17th December 1628, Chalmer *against* L. Craigivar.

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1628. *March* 6. NICOL *against* HUME.

NICOL, pursuing some of the Laird of Aiton's tenants, to make their farms addebted by them to the Laird, their master, forthcoming, as arrested in their hands by the pursuer, for a debt owing to him by the Laird;—in this process compears one Hume, creditor to the Laird, and who had arrested thir same farms, and alleged that the pursuer had obtained a decret for farms arrested in the tenants' hands, of another year preceding, which would extend to a greater quantity than would satisfy his debt; and so he ought not to misken that sentence, whereby he might be paid, and *de novo* again arrest, thereby to pre-judge other creditors. The Lords found that the pursuer, having recovered a decret for his debt, as said is, ought either to renounce the same, or to assign it to the party, or qualify and instruct some competent reason why the same cannot be available to him: or, if he would not, but that he did adhere thereto, that he could not arrest, *de novo*, for satisfying of that same debt, whereof he behoved to be found satisfied by that sentence, which he could not show he could be frustrated in the execution thereof; it being in his own default, that