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lands, bought from the cedent by the suspender, and which he *alleged* in his suspension he had lawful cause to retain against the assignee, seeing the cedent in the contract of alienation of the said lands had disposed the farms of that crop, the year of the alienation, which were nevertheless uplifted and intromitted with by himself, the quantity, price, and intromission whereof he referred to the oath of the cedent, and who now being *non solvendo*, the same was *alleged* ought to be received against the assignee, and that he ought not to be prejudged by the said assignation made to his prejudice, seeing as it would meet the cedent's self, the non liquidation, and all being elided by the referring to his oath, so ought the same to be admitted against the assignee. THE LORDS found that the cedent's oath could not be taken against the assignee, therefore, seeing the debt was not liquidated against the cedent's self, and they ordained the money (for the same was consigned in the suspension) to be given to the assignee, he finding sufficient caution to repay the same to the suspender, whensoever the cedent should be constituted lawful debtor to the suspender; in the liquidated farms foresaid, disposed to him in the said contract, and when his intromission therewith should be lawfully tried; for the making of the assignation to the cedent, who was become *non solvendo*, was not found to be sufficient to prejudge the suspender of his execution of that head of the contract, wherein the cedent was obliged to him, inhibition being also executed by the suspender thereupon against the cedent, before the making of the said assignation.

Clerk, Hay.

*Fol. Dic. v. 2. p. 235. Durie, p. 274.*1662. February 15. LAIRD OF PITFODDELS *against* LAIRD OF GLENKINDY.

No 292.
Oath of the
cedent good
against the
assignee be-
fore intima-
tion.

IN the review of a decret in 1659, at the instance of the Laird of Pitfoddes, against the Laird of Glenkindy; in which decret, Glenkindy's cedent's oath, having been taken, that the cause of the bond was for an assignation to a wadset, which was excluded by apprising; after report whereof, Glenkindy the assignee *alleged*, That his cedent's oath could not prejudice him; and it being *answered*, That he made no objection before the oath taken, neither could make any just objection, because the oath of the cedent, any time before intimation, is sufficient against the assignee; Glenkindy *answ. rea*, That his being called in that process as assignee, and compearing, and insisting as assignee, was an intimation, which was before taking of the oath, which was found relevant in the said decree, and now rescinded by the LORDS, upon this consideration, that the citation being *ad hunc effectum*, to instruct the cause of the bond, the insisting in that pursuit could not be such an intimation, as to exclude the cedent's oath.

Fol. Dic. v. 2. p. 235. Stair, v. 1. p. 101.