

got its intent, I knowing of it, for it designs no other thing by appointing registration, but that it become public and come to men's notice; yet this private knowledge puts no man *in mala fide* to take a right to these lands; for though I know ye have a seisine, so it is as true I know it yet to be null and imperfect till it be registrate: just like an assignation to a debt, I know ye have one, but it is not intimate, that will never hinder me, nor put me in *mala fide* to take an assignation to the same debt; and if my assignation be first intimate, I will be preferred to you; *item*, though the debtor know his bond is assigned, yet he may pay to the cedent without respect to the assignation, at any time before it be legally intimate: Dury 15 June, 1624, *Adamsons*, yet see *ult. Martii* 1624, *L. Dunypace and Sands*: for *id tantum scimus quod de jure scimus*.

*Advocates' MS. No. 155, folio 93.*

1671. *February 25.* HELEN HAMILTON *against* WM. BELL and OTHERS:

THIS is the relict of James Bell the merchant, who as donatrix to her husband's escheat, pursues a special declarator against several alleged debtors to the said James the rebel; and amongst others William Bell his brother being called, and all being referred to his oath, I alleged I would take no day for producing him, because I offered me to prove, that after a fitted account betwixt this pursuer's husband and the defender, the defender was so far from being debtor to him in any sums of money, that to the contrary he acknowledges himself to be debtor to William, now defender, in L.36 Sterling; and lest they say that William might be debtor to the rebel for causes after that, it is answered, that cannot be, because this fitted account is subscribed on the day immediately before James died. *Vide infra, No. 711, Deans and Purves* [18th January 1678.]

To this it was ANSWERED,—That this fitted account being subscribed by the rebel long after his denunciation to the horn, there being *jus quæsitum Domino Regi superiori, ejusque fisco per rebellionem*, he could then do no deed to the prejudice of the king's fisk or his donatar. Yea, in the case of *Glover and George Bayne*, the Lords found a rebel after he was registrate at the horn, could not assign a debt owing to him, in satisfaction of a debt owing by him to one of his creditors. Replied,—That this account being before the gift or general declarator, it were a hard matter to find that he could not therein declare he was indebted to his brother in L.36, upon the casting up of all accounts betwixt them. I confess, deeds after the gift or declarator by the rebel, may be upon very plausible grounds called in question; but to quarrel all his actings from the time of the denunciation, seems very hard and of dangerous consequence. Yet my Lord Advocate inclined to find that he could not fit an account after he was lying at the horn. *Infra No. 422, and 479.*

*Advocates' MS. No. 156, folio 93.*