

1683. *November.* ALEXANDER MEW *against* MR PATRICK CRAW.

FOUND, that the ten years allowed to creditors for redeeming the rights of apprising acquired by apparent heirs, run not from the date of the rights, where they are latent or in trust, but from the time the apparent heir made them public by infestment, or some judicial process; for, otherwise, the Act of Parliament might be easily eluded: and here the apparent heir had been several years in possession after his predecessor's death, which might have given some suspicion to the creditor; and it was ten years since the date of the latent right; but the same was never owned till the elapsing of ten years. *Vide* No. 340, [Young Posso *against* his Brothers, 31st January 1682.]

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1683. *November.* MR JOHN DEMPSTER *against* MR HARY MORISON.

A DEBTOR having gratified one creditor, after another had done diligence, it was alleged for the creditor preferred, that the sum paid had been acquired by the common debtor after the other creditor's diligence. Answered, That a debtor cannot gratify one creditor in prejudice of another's diligence, by paying money acquired after the diligence, more than by payment of sums in his person before, as an inhibition affects lands afterwards acquired in the same shire where it was executed. The Lords repelled the allegiance, in respect of the answer. *Vide* No. 142, [Nicolson *against* Provost Kinloch, February 1686.]

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1683. *December.* MR JAMES MIRK *against* MARY BRUCE.

IN the redemption of an adjudication, the debtor alleged he could not be liable to pay the expenses, in respect the sums adjudged for stood arrested the time of the adjudication, and he could not have paid till the arrestment was loosed. Answered, The debtor has himself to blame, for suffering the creditor to expedite his adjudication, without compearing to allege upon the arrestment; for, if the debtor had compeared, and objected the arrestment, or intimated the same, it would have been loosed by the creditor, there being no ground for it; and, therefore, the debtor ought to refund his expenses. The Lords were of opinion that the adjudger should have his expenses refunded; but the parties agreed among themselves before interlocutor.

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1683. *December.* JAMES WOOD *against* MR PATRICK REID.

ANDREW Balfour, who was bankrupt, having, without any onerous cause, as-

signed a bond to Mr Patrick Reid; after intimation of which assignation, the debtor acquired right to an old debt, due by Balfour the cedent, long before the assignation; and the bankrupt's assignee having pursued the debtor for payment, he, the debtor, raised reduction of the pursuer's assignation, upon the Act of Parliament 1621, as being acquired *titulo lucrativo*, after contracting of the debt he was assigned to. Answered, The pursuer has acquired right to a bond due by the said Balfour, which is a sufficient onerous cause of the assignation made to him. Replied, The defender's assignation being prior to the pursuer's acquiring right to that bond due by the bankrupt, his cedent, and so a ground of compensation, That *inest de jure*, the pursuer's posterior right to his cedent's bond cannot make an onerous cause to support the former assignation in his favours, and cut off the defender's anterior ground of compensation. The Lords assoilyied the defender from the process for payment, and likewise decerned in the reduction against Mr Patrick Reid.

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1683. Dec. SIR WILLIAM LOCKHART of CARSTAIRS *against* SIR WILLIAM THOMSON, and SIR WILLIAM THOMSON *against* DAVID WEEMS.

IN a pursuit, at the instance of Sir William Lockhart against Sir William Thomson, upon a precept granted by him to the pursuer, acknowledging the receipt of 360 merks, and obliging himself to deliver a precept for the same, from the Earl of Crawford, lord treasurer, to the pursuer, whose father was one of the public receivers, or else to refund the money;—Alleged for the defender, The delivery of the precept, now that the lord treasurer is dead and exauctorate, is *factum imprestable*; in lieu whereof, nothing but damage and interest can be claimed; and the pursuer could qualify no damage he sustains through the want of the precept, in regard the Exchequer is debtor *aliunde* to him in a greater balance than he has any hopes to get payment of: so that, in effect, *nihil deest* by the want of the precept. The Lords repelled the defence, and decerned. The contrary found in another case for Sir William Thomson against David Weems.

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1683. December. JOHN WHAN, Smith in Leslie, *against* _____.

IN the reduction of two bonds, upon this reason, That they were granted by the pursuer when he was very sick, and in danger of death, and so must be reputed *donatio mortis causa*, consequently reducible and revokable upon his convalescence and recovery;—Answered, *Non relevat* that the pursuer was sick; for sick men may borrow money, and, by the civil law, *donatio facta a moriente* was not *donatio mortis causa*, but considered as a deed *inter vivos*: but then, again, the bonds bear borrowed money, without any mention of death or sickness; which is inconsistent with *donatio mortis causa*. The Lords assoilyied from the reduction.

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