

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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