

that the compensation meets the assignees, as [it] did Mitchel or Littlegil ; and, there being other grounds of compensation not liquid, the Lords allowed the defender a fortnight to liquidate these, superseding extracting in the meantime. Here the defender's case was favourable, to be free of cautionary paid by the sale of Binnie, the principal debtor's lands ; where Hugh St Clare, who, by virtue of a factory, sold the estate, and paid the debt, took assignation to the bonds, and transferred them to Littlegil.

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1685. *February* 13. JOHN JOLLY *against* The LAIRD of LAMINGTON.

IN a process of forthcoming, at the instance of one Jolly, against the Laird of Lamington, as debtor to Robert Baillie, the pursuer's debtor, compearance being made for Theodore Montgomery, who had right by assignation, intimated before the arrestment ; the pursuer proved, by the assignee's oath, that assignation was a trust for Robert Baillie's behoof ; after which Lamington, having taken a discharge from Theodore, and proponed upon the same, the Lords found, that Lamington was *in mala fide* to disappoint the arrester, by making voluntary payment to the assignee, after he knew the assignation to be trust, and after the matter was litigious betwixt the assignee and arrester ; and therefore decerned in the forthcoming.—*February* 1685.

It was afterwards alleged for Lamington, That the discharge was granted before Theodore gave his oath ; and Lamington protested against his deponing, as being denuded. Answered, The defender was *in mala fide*, after the arrestment, to take a discharge, and ought to have suspended upon multiplepoinding ; 2. The defender's oath of calumny is craved, that the discharge is not of the date it bears, and, being *falsum in data quam præ se fert*, must at best be looked upon but as blank in the date ; so that the defender must prove it was of a date anterior to Theodore's deponing. The Lords sustained both replies ; and found, that the defender could not take a discharge in prejudice of the pursuer, after the matter was litigious.—*February* 1685.

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1685. *February* 13. SIR GEORGE LOCKHART *against* SIR JOHN CLARK of PENNYCOOK.

JAMES Clark, having disponded his lands of Wrightshouses to his brothers, Sir John and William, some years ago, and thereafter, Sir John having taken an heritable bond of annual-rent out of these lands, for the sum contained in the disposition, and other sums then advanced ; they forbore to take infestment till James was broken, and then they infest themselves upon both rights ; and, the day after, Sir George Lockhart was infest in an annual-rent upon James Clark's bond. There arose a competition betwixt Sir George and the two brothers of the common debtor. Alleged for Sir George Lockhart, That he ought to be preferred, in respect the brothers' delay to infest themselves, to cover James's trade