

Sir William's cabinets and papers, that the writs relating to her right from her husband might be inspected. *Vol. I. Page 386.*

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1685. *December 22.*

JOHN Cuthbert having been examined on a commission obtained by Elizabeth Frazer and Hugh Monro of Taninich, her husband, for exhibition of writs : and it being represented, by a bill, that at the examining they would not give the pursuer access ; *2do*, That their oaths want these formal and solemn words, " As they shall answer to God :"

Lord Carse, to whom the consideration of the bill was referred, annulled the report, on the want of these words, and granted a new one.

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1685. *December 23.* ARCHIBALD LAW *against* JOHN BALLANTYNE.

THE case of Archibald Law, writer, and John Ballantyne, door-keeper to the advocates, was reported by Carse. This was a competition betwixt Law as assignee, and Ballantyne an arrester and inhibitor. They eluded the arrestment, because infetment had followed on the debt arrested ; and, for the inhibition, though it was prior to Law's assignation, yet he offered to prove there was a prior assignation from William Brown of Stevenson, which was given back, and this was taken from John Adam his trustee ; and so it must be drawn back *ad suam causam*, and reputed in implement of the first assignation. ANSWERED,—That cannot be, for the first was absolutely passed from and extinct ; and no law can make a resurrection of it. *Quod semel extinctum est reviviscere nequit, et quod nullum est nullum debet sortiri effectum.*—If it had been casually lost, there had been some ground to recur, but not where it was deliberately cancelled. REPLIED,—It was only then laid aside as unnecessary.

The Lords found, that its tenor might be made up *ad hunc effectum*, for proving that there was a prior back-bond and assignation before the arrestment and inhibition, providing there was no fraud in concealing it, for disappointing William Brown's other creditors ; and remitted to my Lord Carse, reporter, to inquire anent the reason of cancelling these writs, and to do therein as he shall find cause.

This being reported again on the 28th January 1686, the Lords found the former assignation has been cancelled *animo fraudandi* of William Brown's creditors ; and therefore reversed their former interlocutor allowing the tenor of it to be proven ; and simply preferred Ballantyne's right to Law's.

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