

1686. *December.* LORD BANFF *against* HIS LADY.

A PROCESS of adherence before the commissaries, pursued by my Lord Banff against his Lady, was advocated by the Lords, and the Lady assoilyied, without remitting to the commissaries, with directions,—in respect the Privy Council, in a process of aliment, at her instance, had found, that there was cause for a distinct aliment, which imported a cause for separation.

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1686. *December.* DUNDAS of BALLENDARY *against* MR GEORGE WILSON of PLEUGHLANDS.

MR George Wilson, who was to pay 4000 merks to Dundas, having assigned him to Fordel Henderson's bond for the like sum, with absolute warrandice qualified thus, That in case the assignee using due and exact diligence, by registering the bond, raising horning, poinding, and arrestment, and discussing any suspension of the charge, should not recover payment, then the cedent was to be liable after retrocession of the right and diligence: The assignee, having suffered Fordel to live thirteen months after, without doing any diligence against him, recurred, after his death, by a pursuit, against the cedent. Alleged for the defender, That the pursuer had neglected to use the diligence above-mentioned, by which he might have recovered payment; and now Fordel's affairs are turned in such confusion as the defender will find it difficult to recover the money. Answered for the pursuer, The pursuer is under no positive obligation, by the clause, to do diligence; for it imports only a delay of recourse till the diligence be done, which is now imprestable, when Fordel is dead; and yet the pursuer hath done the equivalent, by adjudging against the heir as soon as any other creditor: Nor had the pursuer any reason to charge and distress Fordel incivilly; who was represented and reputed solvent, and been trusted by the defender with the money, for fifteen years before assignation, without using any diligence; 2. There is no time appointed for the doing of diligence in. Replied, No time is the present time. The Lords decerned against the cedent. *Vide* No. 124, [Sir James Dick against William Dick of Grange, February 1688.]

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1686. *December.* LORD BARGENNY *against* LIN of LARG.

IN a declarator of expiring of the legal of an apprising, at the instance of the Lord Bargenny,—the Lords found, That the pursuer's receiving, since the legal expired, annualrents for terms after expiring, and obliging himself to hold count therefore, in the apprising, did import a prorogation of the legal, till declarator; and the apprising was now purgeable by payment of the superplus, for which the Lords allowed till Candlemas next.

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