

1693. December 9. ————— against His CREDITORS.

IN a *cessio bonorum*, sought by ————— in Ayr, the Lords would not liberate the bankrupt; because it appeared, from his oath, that he had given an assignation, since he was incarcerated, to Mr Blackwood, one of his creditors, of forty pounds Scots, yet due to him as his waiter's fees; which being a contravention, to the prejudice of other creditors, he behoved to remain, unless his assignee would renounce his right, and make it forthcoming to all his creditors, equally amongst them.

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1693. December 12. MARY MIDDLETON, LEY her Husband, and Ross of TULLYSNAUGHT, against WILLIAM TURNER.

IN the case of Mary Middleton, and Ley her husband, and Ross of Tullysnaught, their assignee, against William Turner, notary, about the reducing of a testament, and what witnesses should be now allowed to be examined; the Lords found, no witnesses ought to be received in such a case, but those who were present at the time of the defunct testator's subscribing; and that the legators in the testament, and debtors of the defunct, could not be received as habile to depone anent the capacity and condition the defunct was in at the time of his signing, if he was *in extremis*, and whether it was all read or not; but only to be interrogated if there was a blank in the testament at the time it was subscribed, and if, in it, there was afterwards filled up, the universal legacy to the wife. By the Roman law, *legatorii et fidei commissarii particulares* might be instrumentary witnesses in a testament,—§ 11. *Instit. de Testamentis Ordinandis*; and it is hard to take away a testament by extraneous witnesses, not adhibited by the defunct himself.

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1693. December 12. JANET CUTHBERTSON against JAMES FISHER.

IN the case of Janet Cuthbertson against James Fisher, the Lords found the general discharges passed betwixt Inglis and Fisher, at Martinmas 1681, did not include the bonds whereto Fisher had right by assignation standing in his person before the date of the said discharge, in regard they were neither expressed therein, nor given up as discounted; nor could they be satisfied by three years' intromission with the rents of the house; which was all the subject matter that Fisher had to account for in 1681; and it appeared his said intromission was exhausted otherwise than by ascribing it to these bonds.

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