

25th January 1632, *Kaidly*; where the Lords found a passive title in one process proved in another by production of the decret, without adducing the probation *de novo*.  
Vol. I. Page 702.

1696. January 22. JOHN ROBERTSON *against* DAVID BEATSON of POWGUILD.

Rankeilor reported Mr John Robertson against David Beatson of Powguild, for payment of 3000 merks contained in his bond, bearing that Robertson had assigned him to 7000 merks due to him by the Earl of Dalhousie, with this quality,—that he should do diligence for that, as well as for the sums due to himself by Dalhousie; and that he should pay him the said 3000 merks out of the first and readiest of what he should receive from Dalhousie, either by virtue of the rights assigned to him by Robertson, or any other rights whatsoever standing in his own person: and Robertson subsumed that Powguild had got considerable sums from Dalhousie, and so the condition of paying him the 3000 merks was come, *dies tam venerat quam cesserat*.

ALLEGED,—That his receiving money from Dalhousie *non relevat*, unless it was by virtue of Robertson's assignation; and these words, "or by virtue of any other right," can admit no rational sense and construction but this, by virtue of any other right in his person relating to the sums transferred to him by Robertson. And it is not to be presumed he would have given him 3000 merks for nothing, which he would be forced to do, if this were sustained: for he offered to prove, he got no money from Dalhousie by Robertson's assignation, because he was either excluded by preferable rights, or it was paid before the assignation.

ANSWERED,—This was a bargain of hazard, like the *jactus retis* mentioned in law,—I give you right to 7000 merks, providing you pay me 3000, if either you get payment by my right, or by the debts due to you by Dalhousie standing in your person at the time of the transaction, extending to 20,000 merks and more; and I offer to prove you got payment of your own.

The Lords found this a bargain; and that he was liable for the 3000 merks, if he got as much from Dalhousie, by virtue of any right standing in his person at the time of the agreement with Robertson; but thought it relevant to infer warrandice against Robertson, if Powguild proved the sum assigned was paid before the assignation; but found his being debarred by preferable rights not relevant.  
Vol. I, Page 703.

1696. January 24. MUIR of MONKWOOD *against* CRAWFURD of NEWARK.

IN the cause Muir of Monkwood against Crawford of Newark; this allegiance was proponed,—I cannot pay this sum contained in my father's bond, because your cedent, from whom you derive the right to it, was my tutor, and so *præsumitur intus habere ante redditas rationes*, he not having as yet counted with me for his administration. ANSWERED,—That brocard only extended to debts acquired by tutors or curators, *durante tutela et curatela*; but this debt