

judication, that it was null and informal, because he being constituted assignee to most of the debts for which it was led, he had raised his charge to enter heir against Eccles before he had got these assignations in his person, and so the charge was *filius ante patrem*.

ANSWERED, *1mo*. He had a debt due to himself, which was sufficient to support the charge, that debt being antecedent thereto; *2do*. Before the charge to enter heir was executed, he had all these assignations in his person; which was sufficient, the giving the charge being the true application of the diligence:

REPLIED,—They did not quarrel the adjudication as to his own debt, but only *quoad* those conveyed to him; *2do*. The charge being the warrant by which he was charged to enter heir, and these assignations being posterior to the date of the charge, they were unwarrantable and destitute of a warrant; and so the Lords found, *15th November 1666, Abercrombie*, marked both by Stair and Dirleton; though Dirleton subjoins another between *Kennedy* and *Hamilton* to the same purpose, yet the first speaks only of an assignation taken after the summons was executed.

The Lords divided on the question, five against five, and the President for the time did cast the balance by finding the adjudication not null, though the charge preceded the assignations, seeing the execution on the charge was posterior; and so repelled the objection.

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1703. *February 13.* JAMES SCOTT *against* WILLIAM SIMPSON.

JAMES Scott, servant to Mr Archibald Hamilton, advocate, gave in a complaint against William Simpson, servant to Robert Boyd, writer, that he had the day before beat him to the effusion of his blood, in the afternoon, when the Lords were sitting; and craved redress. Simpson, being brought by a macer, acknowledged his fault, but ALLEGED the Lords were risen before the quarrel fell out; which exculpation the Lord accepted, seeing, if it had been done while they were sitting, it was death by the 177th Act of Parliament 1593; therefore, they sent him to prison, and ordained him the next day to stand with a paper on his brow, mentioning his crime, betwixt nine and ten in the forenoon, at the great door of the Parliament-House, guarded by some of the Town of Edinburgh's company, to be a terror and example to others, and there to crave pardon on his knees; all which was executed, and on his humble application he was at last liberated out of the prison. He had no means, else he had been likewise fined, and extruded the Session-House.

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1703. *February 23.* GEORGE BAIN'S HEIRS *against* ALEXANDER YOUNG.

PATRICK Suity being established a factor at Campvere, by the royal boroughs, he found Alexander Young, merchant in Edinburgh, his cautioner. George Bain, merchant there, did send over some parcels of goods to the said Patrick, to the value of 2500 merks; and having received no account of the product from the factor, the said George's heirs pursue Alexander Young the cautioner, for count, reckoning, and payment; who ALLEGED, *1mo*. That a great part of the