

1703. *January 14.*ALEXANDER DEANS *against* JEAN HAMILTON.

No 154.

One was charged to provide his wife in a life-rent, in terms of their contract of marriage; there after he was charged by another creditor. He disposed a bond to his wife: Not reducible, being granted in favours of the creditor who had done most timely diligence.

RANKEILLOR reported the competition betwixt Alexander Deans in Prestonpans, and Jean Hamilton, relict of Mr Robert Deans, advocate. By his contract of marriage with her, he was bound to provide her to the life-rent of 20,000 merks; and being charged by the friends, at whose instance execution was appointed to pass, he gave her an assignation to a bond of 1000 merks owing to him by Hamilton of Caldcoats. Alexander Deans being a creditor, and charging him with horning, he suspends, and in regard he could not find caution, he consigns a disposition *omnium bonorum* in place of a cautioner, in the terms of the act of federunt; and Alexander at last obtaining a decreet of suspension, he arrests the sum due by Caldcoats to the said Mr Robert, and craves preference, on these grounds, that he had charged him with horning before he made the assignation to his wife, and that being a voluntary gratification of a debtor *oboratus*, it must be reducible on the act of Parliament 1621, being *inter conjunctas personas*, and in prejudice of his prior diligence.—*Answered*, Though my assignation be posterior to your charge; yet it was not a voluntary deed, but in obedience to a charge of horning, prior to yours, for implement of his contract of marriage: *2do*, It falls not under the act 1621, because it was for a most onerous cause, she being creditor by her contract of marriage in the annual-rent of 20,000 merks, and this is all she can get for it; and though her husband had disposed this to the said Alexander to procure his suspension, prior to her right, yet that can be no ground of preference; for that assignation was never intimate, and her's was the first complete right.—THE LORDS preferred the relict, unless Alexander could prove him bankrupt at the time by absconding, retiring to the Abbey, being in prison, or the like qualifications contained in the act of Parliament 1696.

*Fol. Dic. v. 1. p. 79. Fountainball, v. 2. p. 173.*

1709. *December 22.*JOHN HENRY, Cordiner in Edinburgh, *against* JOHN GLASSELS and GEORGE CONING, Merchants in London.

No 155.

Found, that a party having received a voluntary assignation from his debtor, in security of by-gone debt, and having recovered the sum assigned, might, not-

THOMAS GLASSELS, merchant in Glasgow, having, in security of bygone debt due by him to John Glaffels, his brother, and George Coning, assigned to John Glaffels, his interest in the capital stock of the African Company; by virtue of which assignation the money was uplifted from the commissioners of the equivalent: John Henry, creditor to Thomas Glaffels, raised reduction against John Glaffels, of the foresaid assignation, upon the act of Parliament 1621, as being granted to a conjunct person, after Thomas Glaffels was at the horn for the debt due to the pursuer. The defender, for supporting the assignation, produced a