

ed in the hands of George Piper by way of commission, in order to be sold at Coningsberg, and the product to be returned in other goods from thence. William Souper claimed to be preferred upon this ground, that the principal commission accepted by Mr. Piper was indorsed and delivered up to him, and ought to prefer him to any separate right made of the goods therein contained, though first intimated; because, his right needed not to be intimated, more than the indorsation of a bill of exchange; and, in transactions among merchants, no assignation to an accepted commission or bill, without delivery of the principal commission or bill, is valid, or can warrant the acceptor to pay.

ANSWERED for Balwylo,—He is clearly preferable, by having both intimated an assignation to the goods, and arrested them in Piper's hands, before intimation of Souper's right. For where was it ever heard that privileges allowed by law to bills of exchange, are communicable to other merchant-conveyances? and to say that an assignation to merchant goods could be completed without a formal intimation, or that such an assignation could not be made without delivering up the principal commission, is *sine lege loqui*.

The Lords preferred James Miln of Balwylo.

Page 258.

1708. July 16.

[ANENT the POOR'S ROLL.]

The Lords refused a gratis warrant; in respect the report of the Advocates for the poor bore not that the petitioner had *probabilem litigandi causam*, but only that he deserved the benefit of the poor's roll.

Page 268.

1708. July 16. WALTER WILLIAMSON of Cardrona *against* THOMAS THOMSON, Writer in Edinburgh.

THOMAS WILLIAMSON, as apparent heir to Thomas Williamson, merchant in Peebles, having disposed some tenements of land there to Thomas Thomson, without a procuratory to serve him heir to his predecessor; and, thereafter, disposed the same to the deceased William Williamson, sheriff-clerk in that town, with a procuratory to serve him heir: Thomas Thomson applied to, and required John Frier, bailie in Peebles, to cognosce Thomas Williamson, his author, heir to his predecessor; and, thereafter, to infest himself upon Thomas Williamson's disposition: which the bailie refusing to do, Thomas Thomson protested against him for cost, skaith, and damage, and took instruments, *September 26, 1707*. Thereafter, Mr. Walter Williamson of Cardrona, son to the deceased William Williamson, was infest in the lands aforesaid, as heir to him, after cognoscing Thomas Williamson heir to his predecessor; and raised a declarator of his own right, with a reduction of the disposition to Thomas Thomson.

ANSWERED for Thomas Thomson,—Albeit Cardrona was first infest in the subject under debate, yet his instrument against the bailie being prior to Cardrona's

season; and all that a prudent man could do to expedite the first infestment, was, in the construction of law, equivalent to infestment; and, therefore, a ground of preference to Cardrona, who got the start of him only by the bailie's partiality.

REPLIED for Cardrona,—The bailie was in the right, not to comply rashly with Thomas Thomson's desire, because of the dangerous consequence of infesting any person as heir to his predecessor, which subjects him to a passive title; and because of the want of a procuratory for that effect.

The Lords preferred Cardrona; in respect that the disposition in his favours bears a procuratory for serving the disponent heir to his predecessor in the subject disposed, and Thomson's disposition bears no such procuratory or warrant; albeit it was alleged for Thomson, that the disposition in his favours implied a warrant for serving the disponent heir to his predecessor, in the subject disposed.

*Page 268.*

1708. *July 22.* WILLIAM ROLLMAINERS *against* The LADY BLANTYRE, and others.

WILLIAM ROLLMAINERS having raised a furthcoming against the Lady Blantyre, of some moveables belonging to William Scot, merchant traveller, his debtor, arrested by him in her hands; and, after an act was extracted, the defender having, for her own security, called the other creditors of William Scot in a multiple-pounding: the raiser of the process of furthcoming craved, that *ante omnia* before deciding the preference, he should be preferred for expences he had been at in raising summons, extracting acts and other diligence, in order to make the subject effectual; as being in *rem versum* of the party who comes to be preferred, and disbursed upon the common interest: seeing it were hard another preferred should reap the benefit of Rollmainers's charges, and draw the whole stake without any burden thereof; and in sales, or other common concerns of creditors, the money expended to make the subject effectual, useth to be paid off the whole head.

The Lords refused to allow expences.

*Page 271.*

1708. *December 10.* SIR ALEXANDER CUMING *against* JOHN VERE KENNEDY.

SIR ANDREW KENNEDY, having in anno 1689, got a commission from King William, to be, during his lifetime, conservator of the Scottish privileges in the Netherlands, and his Majesty's resident: he, in anno 1697, procured a new commission to himself and his son, narrating and ratifying the former; with a *novodamus* to them, during the lifetime of Sir Andrew, to be conjunct conservators and residents, and to John Vere Kennedy, to be conservator and resident after his father's decease, during the King's pleasure. Sir Andrew Kennedy having, for malversation, been deprived of his office of conservator, *January 16, 1708*; and of