

CONDICTIO INDEBITI.

1629. *January 13.*FINLAYSON *against* KINLOCH.

KINLOCH being made assignee by Robert Finlayson, to the mails of a house pertaining to him, and the assignation being intimate to the possessor, and another creditor to Robert Finlayson having arrested the said mails, after the said intimation, for satisfying a preceding debt, decerned against the said Robert, and upon the arrestment recovering sentence, and upon the sentence going to point, for eschewing thereof the possessor having payed; the LORDS, notwithstanding of the said sentence and payment, found that the assignee, who first intimate before the arrestment, ought to be preferred; albeit the arrester *alleged*, that nothing had followed upon the said intimation, nor no diligence done thereupon by the assignee, while this present pursuit moved by him against the said possessor, which was not intended until after his sentence and payment, so that his prior diligence *qui sibi vigilavit*, was *alleged*, ought to be preferred to the assignee, who did nothing by the space of a year, or little less, after his intimation; even as when many arrestments are made by sundry creditors, not the first arrester, but the first doer of diligence upon his arrestment, is to be preferred; so not the first intimation, which is of no greater force than an arrestment, but the diligence ought to be repelled; notwithstanding whereof the first intimation was preferred.

*Act. Lermonth.**Alt. Mowat.**Clerk, Scot.**Fol. Dic. v. 1. p. 186. Durie, p. 413.*1661. *July.*JACK *against* FIDDES.

THERE being a decret recovered by another Fiddes against Jack, before the English officers at Leith, in the beginning of the year 1652, for a sum of money; whereupon Jack being incarcerate, he was forced to give a bond to this defender, who was assignee constitute by this Fiddes, and to give his brother cautioner therein. Upon which new bond Jack was also charged, and an act of warding followed thereupon; the bond being registrate in the town court-

No 1.

Action of repetition found competent to an assignee against an arrester, whose arrestment was posterior to the intimation of the assignation, but who had obtained payment on a decree of furthcoming.

No 2.

Condictio indebiti was sustained, although it was pleaded, that there existed, an *obligatio naturalis vel civilis*, prior to