

tory might have proceeded from either his ignorance, or that the same were not then in his sight, or that the clerk might possibly have forgotten to write them up; and they were of so little avail, and of so small importance, that thereby he cannot be made heir; specially seeing he offered to make them all forthcoming, and that they were extant in as good state as they were the time of the inventory. Which duply was not sustained; but they found that they would advert diligently to the probation, anent the deeds of the defender's intromission, and to the very particulars which should be proven to have been intromitted with by him, and the manner thereof; and would thereafter consider, at the advising of the process, if thereby the defender should be found in reason liable as heir, or not: To which time the Lords superseded to declare if he shall be thereby heir, or not, and what it shall import.

*Act.* Cunninghame. *Alt.* Stuart. Scot, *Clerk.* *Vid.* 15th January 1630, Cleghorn.

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1632. *January* 31. MILLER *against* NISBET and GAVIN LINDSAY.

ONE Miller, having obtained sentence against Nisbet, his father's relict, as executrix to him, to pay a sum owing to him by his father's bond; and thereafter arresting, in Gavin Lindsay's hand, a sum addebted to his father, and pursuing to make it forthcoming;—the defender alleging, that, before the arrestment, the relict, executrix foresaid, had recovered sentence against him to pay to her the sum; which decret she also, before the arrestment, assigned to a creditor of her husband's, and which creditor also intimated the assignation to him before the arrestment, and to which assignee he has paid the debt acclaimed from him;—this allegiance was sustained; albeit the payment was made, and the discharge reported, after the arrestment, in respect of the other titles before the arrestment, which were a warrant to the payment thereof: And the Lords found it not needful to the party to allege that he paid the whole debt owing by him to the said assignee, to whom the pursuer alleged that there was not so much owing as was owing by him to the defunct; and therefore that the superplus should be made forthcoming to him for his debt. Which was found not necessary; for it was found that the assignee might discharge the debt for nothing, if he pleased, and that the debtor was thereby liberated; and that the pursuer, or any other of the defunct's creditors, had action safe to them against the executrix and her cautioner found in the testament thereanent, to pursue them therefore; but that, as the executrix's discharge did liberate the debtor after sentence, and that she remained thereafter accountable, so her assignee's discharge did the same, without necessity to allege total payment; seeing the whole was totally assigned, as said is.

*Vid.* 8th March 1632, L. Luss.

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