

1632. July 25.

A. against B.

No 17.

A BLANK assignation delivered to a party, infers not that it was delivered for the behoof of the receiver, except it be proven that it was delivered to that effect; although that a number of the LORDS thought, that the delivery to the party was sufficient, and ought to be understood it was given to be filled up, at the receiver's pleasure and for his behoof.

*Balmanno, MS. (ASSIGNATION.) p. 14.*

1634. January 9.

KNOWS against E. of MARR.

No 18.

THE Earl of Marr being addebted to Michael Elphinston the sum of 7000 merks, by two heritable bonds, which were apprised from the said Michael, by James Knows assignee constitute, by two of Michael's creditors: The Earl of Marr is pursued by the said James appriser, to make the said sums furthcoming.—In the action compares Thomas Bruce, provost of Stirling, for his interest, and *alleges* the said sum should be made furthcoming to him, because he was made assignee to the said sums, by the said Michael, and his assignation intimate, before any denunciation used by the compriser.—To which it was *replied*; That the assignation was null, because it was offered to be proven, that notwithstanding of the assignation, the cedent was in possession in uplifting the annualrents diverse times after the date of the said pretended assignation; and that Thomas Bruce himself had taken a factory since the said assignation, from the said Michael; and as factor, had given discharges to the Earl of the annualrent; whereby he had past from the assignation.—To which it was *answered*; That the assignee had given no discharges as factor, after the intimation of his assignation; and what he did before, cannot prejudge him; because his assignation was no perfect right, before it was intimate; but after the intimation became perfect.—To which it was *replied*, That the acceptance of a factory annihilated the assignation, and extinguished the same, and the posterior intimation could not make *non ens* to revive; which reply the LORDS found relevant.

The cedent retaining possession, and the assignee taking a factory from him, found to extinguish the assignation.

*Balmanno, (ASSIGNATION.) p. 14.*

1635. December 8.

MUIR against CALDER.

No 19.

UMQUHIL Henry Hunter was addebted to Thomas Barber in 300 merks: This Henry having left behind him only one daughter, that lived not long after, his means fell to two sisters, Janet and Bessie Hunters. John Muir, who married Janet, paid the sum to Thomas Barber, and took assignation of it in the Laird of

The assignee can be in no better situation than the cedent would have been.