1682. *February.* SHED *against* SIR PATRICK NISBET.

ONE Shed having inserted his creditor Sir Patrick Nisbet's name in a blank bond due by one Scot, without taking a back-bond,—some years after, Sir Patrick pursued Shed. Alleged for the defender, That an assignation granted by a debtor, not bearing expressly in satisfaction, is presumed a corroborative security; but, when a creditor takes right to a bond, by getting his name inserted, that presumes satisfaction, unless the contrary be made appear. Which allegeance the Lords found relevant: but this is not *sine suo scrupulo*, Shed not having retired his bond.

Page 19, No. 99.

1682. *February.* SIR JOHN AYTON *against* The LAIRD of INNERNYTIE.

DAVID Stewart having assigned to Sir John Ayton, his brother-in-law, failing lawful issue of his own body, a 4000 merk bond due to him, the cedent, by the Laird of Innernytie his brother, with a provision, That it should be lawful to the cedent to uplift and dispose of the money; and a clause declaring the delivery of the assignation equivalent to the delivery of the bond, which was not then in his possession, but in the hands of Garntully his uncle: he thereafter called for the said assignation, and gave another of the foresaid tenor in lieu of it, with the burden of a thousand merks to be paid to a bastard brother, who, by David's order, three days before his death, burnt the first assignation. Sir John Ayton having raised, after David's death, an action for exhibition and delivery of the bond and assignation, it was alleged for Innernytie, That the assignation bore no clause dispensing with delivery. 2. It having been delivered as the clause imports, the recalling of it infers a revocation of the assignation. 3. It was offered to be proven by witnesses, that Ayton having desired David, when on death-bed, to give up the assignation and bond, he refused, at least gave no answer, but turned him about to the wall; and that he said to others, that the granting of the said assignation, which would have destroyed his father's family, troubled him more as any thing he ever did; but now he had recalled it, and had it in his own custody. Answered for the pursuer, Though there was no express clause dispensing with the delivery, yet,—the cedent having a rational cause for keeping the evident, *viz.* a reserved power to uplift the money, and the sum not simply assigned but tailyied to Ayton, failing heirs of David's body, who are instituted by being *in conditione positi*,—there was good reason for the assignation's remaining with the cedent till his death; and, though it bear delivery, that hath only been symbolical for want of the bond: so that the recalling of it could import no revocation; nor can the effect of writs be taken away by the depositions of extrinsic witnesses, especially as to words omitted long after signing. And the Lords, in the case of Thomas Kincaid against Stark, December 11, 1679, sustained a disposition of lands, reserving a liferent and power to alter, though it had no cause of disposing, &c.; and, if David had inclined to alter, he would have destroyed the second, as well as the first bond. Replied, The assignation, by its conception, is a present right,

though with a resolutive condition, in case of children. This plea was agreed and taken up before interlocutor.

Page 19, No. 100.

1682. *February.* The CREDITORS of the ESTATE of FRENDRAUGHT *against* the VISCOUNT and BOGNY.

THE Viscount of Frendraught, in order to acquire from one Gregory an expired apprising of his predecessor's estate, and yet to evade the Act of Parliament about purchases made by apparent heirs, provided, in his contract of marriage with the Lady Rutherfoord, who had 20,000 merks of tocher heritably secured, that he should give her a jointure; and, by a separate writ, of the same date, renounced the tocher, and declared, that it should be employed on security for her and her children. The Lady and her friends, after the marriage, acquired Gregory's apprising in favours of a blank person, in which, after it had lain some months blank in the Viscount's custody, the name of Bogny, the Viscount's chamberlain, was filled up: who, by his back-bond, provided the lands to the Viscount and his lady in liferent, and to the bairns in the marriage in fee; which failing, to the Viscount's heirs and assignees. In a process against the present Viscount, (his father being dead,) for redeeming the apprising from him, upon payment of the sums truly paid for it;—the Lords found the conveyance fell under the Act of Parliament. *Vide* No. 341, [Marjoribanks' Creditors *against* Marjoribanks, February 1682.] *Page* 25, No. 129.

1682. *February.* MONTGOMERY *against* HAY.

A BOND, bearing to be payable to a husband and his wife, (without mention of conjunct fee or liferent,) and the fee to the heirs of the marriage, was found to import a liferent to the wife.

Page 38, No. 172.

1682. *February.* SIR PATRICK HEPBURN *against* MARY BRUCE.

DOUGAL Macpherson having taken a bond, whereon infeftment followed, to himself in liferent, and his son in fee, with power to him, the father, to uplift and dispose of the money, without the son's consent,—which Dougal did afterwards discharge in favours of his son, who married, and died,—the son's relict, as creditor to her husband, to whom the father was liable by the warrandice in the discharge, having raised a process against the father, for declaring her husband's right to the bond, and inhibited him thereon; Dougal thereafter disponed the heritable bond to Sir John Falconer, for the value to be paid to Sir Patrick Hepburn, who, as creditor *ab ante* to the disponer, raised the reduction of the discharge upon the Act of Parliament, 1621; and the son's relict raised re-