1682. *March.* SHEWAL *against* RITCHIE and RIDE.

IN the competition betwixt [an assignee] and arrester, whose arrestment was posterior to the intimation of the assignation; in respect the instrument of intimation did not bear that a copy was left at the dwelling-house, or delivered to any servant, &c.

Page 19, No. 101.

1682. *March.* PETRICK RED *against* BAILIE CRAWFURD.

FOUND, that one whose name is used in trust by a third party is not, *hoc ipso*, liable to do diligence, unless by a clause he be obliged thereto.

Page 20, No. 102.

1682. *March.* SINCLAIR *against* SINCLAIR.

A MOTHER having lent money, and taken the bond payable to her second son, with a provision, that, in case she stood in need of the money, she should have power to uplift and dispone on it;—the Lords found she could not discharge the debt for mere love and favour, or dispone on it gratuitously.

Page 39, No. 179.

1682. *March.* DALMAHOY *against* HUGH MAXWELL.

MANY of the Lords inclined to think, that a person in prison, having corroborated a bond and decreet, could not quarrel that decreet upon iniquity: but that point was waved upon another allegeance of transaction by abatement.

Page 39, No. 180.

1682. *March.* CAPTAIN ALISON *against* LORD DUMFRIES; and BALGONY *against* CLERK.

THE Earl of Dumfries, being pursued on his bond of 5000 merks, assigned; proponed compensation on a holograph note due by the cedent, to which the defender acquired right since the cedent's death. Answered, The pursuer had raised a process for payment of the bond before the defender's right to the holograph tone. Replied, The assignation, not being intimated in the cedent's lifetime, the bond assigned remained *in bonis defuncti*, so as the assignee could not pursue thereon till he confirmed the same; and the defender's ground of compensation, though acquired after the commencing of the pursuer's action, must be sustained, since it was before his confirmation of the subject assigned.

The Lords, in respect there was a competition of creditors, found the defunct was not fully denuded, unless the assignation had been intimated before his death; and so sustained the compensation; although, when the creditors do not compete, a cedent is looked upon as fully denuded by an assignation, though not intimated in his lifetime, and the sum assigned would fall under the assignee's escheat, if claimed by the donator, and no creditor of the cedent be competing.

The Lords also inclined to have sustained an adjudication led on such an assignation, in the cause of Balgony against Clerk, this same month, as a formal diligence; seeing the competitor did not derive right from Muir the defender's author, but from Carnegy the common author to Clerk and Muir, whose debt was fully established, although Balgony had not intimated his assignation in Muir's life: but this point was not voted in Clerk's cause.

Page 60, No. 253.

1682. *March.* Sir Daniel Carmichael *against* James Johnston.

A wadsetter, who had right to the reversion of an apprising, having used an order of redemption,—the Lords found, That the appriser should, upon payment, assign his apprising to the wadsetter; seeing the appriser had no other debt resting to him, and so could have no prejudice by assigning; albeit the appriser contended, that he was only obliged to renounce:—but found, That the assignation should bear a provision, that, by the acceptation thereof, the apprising should only have the effect of a security for the sum paid to the appriser, and not expire in prejudice of the debtor, or his other creditors: for it was considered, that, by the acceptation thereof, the apprising should only have the effect of a security for the sum paid to the appriser, and not expire in prejudice of the debtor or his other creditors: for it was considered, that, by the assignation to the reversion, the creditors should not be worse than if the debtor had redeemed; *quo casu* the right of apprising would have been extinguished, and the benefit had accresced to the creditors, though, if it had been a posterior apprising, there would have been no necessity for an assignation.

Page 65, No. 275.

1682. *March.* Mr William Gairns *against* The Laird of Drum.

The Lords found, That, when a debtor's tailyied estate is to be apprised, it is more formal to charge the heir of tailyie to enter, than to charge the heir of line, who cannot enter, although the heir of line's estate is to be first discussed.

Page 65, No. 276.

1682. *March.* Rankin *against* Lady Stonyhill.

The rents of an apprised estate being arrested by another creditor, after the