

No 8.

the intimation, albeit after the assignation. It was *answered* for Henderfon, That there needed no intimation to the filling up of a creditor's name in a blank bond, which was never required by law nor custom; and his bond being now in his own name, nothing could prove that it was blank *ab initio*, or that it did belong to Short, but Henderfon's own oath; in which case, it would be sufficient for him to depone *qualificate*, that the bond indeed was blank *ab initio*, and delivered by the debtor to Short, and by Short to him, and his name filled up therein before the arrestment, or at least, that, before the arrestment, he had shown the bond filled up to the debtor, which is equivalent as if he had given back the first bond, and gotten a new bond from the debtor, after which, no arrestment (upon account of the prior creditor) could be prejudicial to him; *ita est*, he hath done more, for he hath proven, that, before the arrestment, the bond was produced, and shown to Brown the debtor. It was *answered*, That, in a former case, in a competition of the creditors of Veitch, (*supra*,) the Lords found, that the arrestment laid on, before intimation of the filling up of a blank bond, preferred the arrefter; and that, otherwife, collusion could not be evited with these blank bonds, to exclude and to save creditors arresting.

THE LORDS preferred Henderfon, whose name was filled up, and presented to the debtor before the arrestment; for, in Veitch's case, there was nothing to instruct that the bond was truly filled up, and presented to the debtor before the arrestment; and they found the filling up and presenting thereof sufficiently proven by the witnesses taken *ex officio*.

*Fol. Dic. v. I. p. 103. Stair, v. I. p. 509.*

1684, *March.* SIR GODFREY M'CULLOCH *against* WILLIAM CLELAND.

No 9.

The transmission of a blank deed, is equivalent to an assignation; and the same consequences follow from want of intimation.

A DEBTOR pursued upon his bond, at the instance of an assignee, *alleged* compensation against the cedent.

*Answered* for the pursuer: That the bond was granted blank, which imports that the granter passed from all grounds of compensation then existing.

*Replied* for the defender: The matter was rendered litigious before intimation of the blank bond to the debtor, by any of the persons acquiring the same, by progress from the creditor who first received it blank; and, though a blank-bond be a present complete right to the first creditor, yet the delivery thereof by him to any other person is but like an assignation, and ought to be intimated.

THE LORDS sustained the defender's reply.

*Fol. Dic. v. I. p. 103. Harcarse, (COMPENSATION.) No 260. p. 62.*