

ing a debt contracted prior to the Rebellion, but is dated posterior thereto. And the assignee also has an arrestment, but does not pursue on the arrestment, but on the voluntary assignation; and obtained a decret. After this, Rome is made donatar to the escheat, and obtains a general declarator; and then alleged for preference, there was *jus quasitum regi et fisco* by the denunciation, after which the rebel could not, by any voluntary assignation, denude himself of the right of this debt, though it was not then gifted: and though he had an arrestment, yet it was not insisted on: and that it was so decided *in terminis*, 14th February 1678, *Sir William Purves* against *James Deans*. ANSWERED,—The King never excluded the diligence of creditors if there was a donatar made; as was clear from *Dury*, 24th February 1637, *Pilmuir*; and *Stair*, 19th February 1667, *Glen*; and he conjoined his arrestment here, though he had not made use of it, because his debtor had given him an assignation.

The Lords demurred much, if an assignation after rebellion ought to have the effect and privilege of a legal diligence by arrestment; and therefore ordained that point to be heard in their own presence.—But here the assignation was not merely voluntary, but to satisfy the debt for which the arrestment was laid on.

And this cause being fully debated, (anent which, see *Stair*, 19th December 1676, *Grant*;) the Lords, on the 17th December, advised it; and, following the President's opinion, they preferred Robert Cleland, the assignee, to James Rome, the donatar of escheat: but if the donatar allege, on the Act of Parliament 1621, that James Weir, the party denounced, was insolvent the time of granting the assignation, or that the debt due to the assignee before denunciation was not just and lawful, ordain the parties to be heard thereanent. And Robert Cleland qualifying, that though there were hornings against Weir, yet he had not fled, and had paid after it L.100 sterling to Mr David Scrimzeor, and so was in credit; therefore the Lords repelled the reason of reduction upon the Act of Parliament 1621.

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1687. December 2. WILLIAM KEAPPIE against JOHN DICK.

The case of William Keappie against John Dick, metster in Leith, was reported by Drumcairn. The Lords turn the bailie of Leith's decret into a libel, because it was pronounced in vacance without a dispensation, and they had refused to admit the intrinsic qualities of his oath; and therefore reponed him to his oath.

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1687. December 3. The HERITORS of ACHTERDIRAN against BOSWELL of BALMUTO.

BOSWELL of Balmuto's case was debated. He being patron of Achterdiran