

No 3.

free gear thereof amounted to greater sums than would satisfy the foresaid debts, whereto he was assigned by the creditors; and he being executor, and the testament containing more free gear than would satisfy the debts acclaimed, and being confirmed, and he decerned executor before the acquiring of the assignation from the creditors; the said assignation made by them to him, must of necessity be converted for the weil of the defunct's heir, whom in law the executor is obliged to relieve of the defunct's debt, so far as the free gear of the testament extends to; and no other assignation can be made by him to any other assignee, which might prejudice the heir of that relief, which the pursuer's cedent, being executor, was obliged to give him of the defunct's debt, by the defunct's moveables. This allegiance was found relevant against this pursuer, albeit she answered, that she was a singular successor, and that her cedent was answerable, and had found caution in the testament, and the defender might convene him for any thing wherein he was obliged in law, for which this pursuer could not be liable; for he might allege, that the free gear was otherways exhausted, or that after diligence, the gear of the testament was not recoverable, which she could not know, and was not competent to her to allege; notwithstanding whereof the allegiance was found relevant to meet this assignee, as it would have met the executor, who was cedent, and the first assignee constitute as said is.

Act. Baird.

Alt. Lermonth.

Clerk, Gibson.

*Durie, p. 508.*

No 4.

1662. July 10.

KER against KER.

AN apparent heir having purchased in an adjudication of his predecessor's estate, led upon the apparent heir's own bond, brought a process upon that title against some havers, for exhibition of the rights and evidents of the lands, and delivery thereof; the defender *alleged* absolutor, because the adjudication was extinguished *confusione*, which was repelled.

*Fol. Dic. v. 1. p. 195.*

\* \* See The particulars of this case, *voce* COMPETENT, No 8. p. 2701.

1664. December 22.

CALDERWOOD against PRINGLE.

No 5.  
An obligation  
in a tailzie,  
prestable by  
heirs-male, is

THE deceast John Pringle of Cortleferry, by his contract of marriage with Alison Pringie his spouse, in *anno* 1632, obliged him to resign his lands in favours of himself and his spouse, and the heirs to be gotten betwixt them; whilks