

summons raised for making furthcoming, and at compearance the debt is referred to her oath, who depones and confesses the debt, but that she gave the bond blank in the creditor's name, and that she knew none other to have right thereto but the said Samuel Veitch. Compears Marion Geddes, and produces the bond registrated, and her own name insert therein, before the arrestment, and thereupon an inhibition served against the deponer before her deposition and oath. It was *alleged* for the arrester, That he ought to be preferred, because the bond being *ab initio* the evident and debt of the said Samuel Veitch, and being affected with the arrestment, before any intimation made to the debtor of inserting Marion's name (though Geddes's name had been inserted, and that the bond had been delivered to her before the arrestment), yet it was of no greater force than if the bond had been filled up in the said Samuel Veitch's name, and had been assigned by him to the said Geddes; which assignation could not have preferred her to the arrester, unless it had been intimated before the arrestment. It was *answered*, That the debtor having delivered the bond blank, no certain creditor was condescended upon; and therefore, till it was filled up, payment could not have been made in whole or in part to any body, but such as should be inserted; and Geddes's name being inserted, and the bond delivered to her, and registrated before the arrestment, there being no law obliging her to make a formal intimation now, while the money is still resting, she ought to be preferred to the arrester, the debtor not being debtor to the arrester's debtor the time of the arrestment.

THE LORDS preferred the arrester.

Gilmour, No 164. p. 115.

* * * See The same case by Lord Newbyth, titled Telfer against Jamieson,
voce COMPETITION.

1668. January 18.

MR ANDREW BROWN *against* DAVID HENDERSON and THOMAS GEORGE.

MR ANDREW BROWN granted a bond of 700 merks, blank in the creditor's name, to George Short, wherein the name of David Henderson is now filled up. Thereon Alexander having arrested all sums due to George Short in the hands of Mr Andrew Brown, he raises a double poinding; wherein the competition arises betwixt the arrester, and the person whose name is filled up in the blank bond. It was *alleged* for the arrester, That he ought to be preferred, because he arrested Short's money; and, at the time of the arrestment, this bond having been delivered to Short blank in the creditor's name, Short was creditor ay and while not only another name were filled up, but also an instrument of intimation were taken thereupon; for Short's filling up of the name of Henderson is no more than an assignation, which requires intimation, and is excluded by an arrestment before

No 8.

Where the blank in a deed was filled up, and intimated to the debtor before arrestment, the arrestment ineffectual.

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 arrester; 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.