sons of reduction, and to sustain the bond. As to that allegeance, That any methods used to impetrate the bond were not by the lady herself, and so cannot meet her, Grotius,—*de Jure Belli et Pacis, lib. 2. cap.* 11. *et lib.* 3. *cap.* 19, —thinks the bond should subsist, because *tu a paciscente coactus non es;* but this does not hinder but in equity you have an action of damages against the extorters of the deed. *Vol. II. Page* 177.

1703. *February* 9. JAMES MAXWELL *against* JOHN RAMSAY of GALRY.

JOHN Ramsay of Galry having bought a piece land from Semple of Fulwood, he pays the price, except 1000 merks, for which he gives bond, expressly bearing, in the narrative, that it was for the remainder of the price. This bond Fulwood assigns to James Maxwell, merchant in Glasgow, who charging Galry on it, he suspends, that, being the price of lands, it must stand affected and subject to purge and clear the incumbrances; *et ita est*, he condescends on an apprising thereof belonging to Fodderance, yet unsatisfied.

ANSWERED,—An assignee for an onerous cause to a simple and absolute bond, clogged with no such quality as to be liable to purge incumbrances affecting the subject disponed, cannot be stopt from payment on any such pretences; for it has a fixed term of payment, which could not have been, if the exacting it depended on the uncertain event of emergent incumbrances; and, if it had been the meaning of parties, that it might be retained on that account, there would have been an express clause inserted in the bond to that purpose.

REPLIED,—If the bond had bore borrowed money, the assignee would have had a good defence, that his money could not be stopt, by offering to prove it was a part of the price of lands; but, when it expressly *et nominatim* bears that to be its cause *in gremio*, it can admit no rational construction save that it was so qualified of purpose to subject it as the mutual reciprocal cause to clear the purchase of all incumbrances.

There were decisions adduced for either side; as the case of *the Lord Ballanden* and *Arniston in November* 1688, and of *Sir Patrick Hepburn, Sir John Hall,* and *James Brown*, since the Revolution,—that a bond payable at a precise term, and bearing annualrent from the date, containing no obligement to purge, cannot stop any assignee for an onerous cause. On the other hand, Stair, *book* 1. *tit.* 10. thinks a bond, acknowledging it is for the price of lands, makes a *nexus realis* even against an assignee, and cites the 28*th November* 1676, *Carmichael* against *Dempster of Pitliver.*

Though many of the Lords inclined to be of this last opinion, yet, before fining of a rule, they resolved to hear it in their own presence.

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1703. *February* 11. KER of MORISTON *against* PRINGLE, ORMISTON, &c. CREDITORS of HOME of ECCLES.

IN a competition between Ker of Moriston, and Pringle, Charles Ormiston, and other Creditors to Home of Eccles, Moriston objected against Pringle's ad-

judication, that it was null and informal, because he being constituted assignee to most of the debts for which it was led, he had raised his charge to enter heir against Eccles before he had got these assignations in his person, and so the charge was *filius ante patrem.*

ANSWERED, 1*mo.* He had a debt due to himself, which was sufficient to support the charge, that debt being antecedent thereto; 2*do.* Before the charge to enter heir was executed, he had all these assignations in his person; which was sufficient, the giving the charge being the true application of the diligence.

REPLIED,—They did not quarrel the adjudication as to his own debt, but only *quoad* those conveyed to him; 2*do.* The charge being the warrant by which he was charged to enter heir, and these assignations being posterior to the date of the charge, they were unwarrantable and destitute of a warrant; and so the Lords found, 15*th November* 1666, *Abercrombie,* marked both by Stair and Dirleton; though Dirleton subjoins another between *Kennedy* and *Hamilton* to the same purpose, yet the first speaks only of an assignation taken after the summons was executed.

The Lords divided on the question, five against five, and the President for the time did cast the balance by finding the adjudication not null, though the charge preceded the assignations, seeing the execution on the charge was posterior; and so repelled the objection. *Vol. II. Page* 179.

1703. *February* 13. JAMES SCOTT *against* WILLIAM SIMPSON.

JAMES Scott, servant to Mr Archibald Hamilton, advocate, gave in a complaint against William Simpson, servant to Robert Boyd, writer, that he had the day before beat him to the effusion of his blood, in the afternoon, when the Lords were sitting; and craved redress. Simpson, being brought by a macer, acknowledged his fault, but ALLEGED the Lords were risen before the quarrel fell out; which exculpation the Lord accepted, seeing, if it had been done while they were sitting, it was death by the 177th Act of Parliament 1593; therefore, they sent him to prison, and ordained him the next day to stand with a paper on his brow, mentioning his crime, betwixt nine and ten in the forenoon, at the great door of the Parliament-House, guarded by some of the Town of Edinburgh's company, to be a terror and example to others, and there to crave pardon on his knees; all which was executed, and on his humble application he was at last liberated out of the prison. He had no means, else he had been likewise fined, and extruded the Session-House. *Vol. II. Page* 180.

1703. *February* 23. GEORGE BAIN'S HEIRS *against* ALEXANDER YOUNG.

PATRICK Suity being established a factor at Campvere, by the royal boroughs, he found Alexander Young, merchant in Edinburgh, his cautioner. George Bain, merchant there, did send over some parcels of goods to the said Patrick, to the value of 2500 merks; and having received no account of the product from the factor, the said George's heirs pursue Alexander Young the cautioner, for count, reckoning, and payment; who ALLEGED, 1*mo.* That a great part of the