

Ex Delicto. An assignation is Effectual against Singular Successors only from the Date of the Intimation 13 January 1629 *Grinlaph contra Kinloch*. And in a Competition of Assignees for Oneros Cause a second assigny making first Intimation is preferred to one whose assignation is of a prior Date, *Starr lib. 3 Tit. 1 S. 6. M'Kenzie Just lib. 3 Tit. 5. S. 3. Vide supra Book second Chap. 3 D. 7.* If an assigny for an oneros Cause was preferred to an Arrestor, the assignation being Intimated tho' not Delivered before the Intimation 24 Feb. 1650 *M'Luig contra Blackwood*. Because Intimation supplied Delivery, and the assigny had force the second to Deliver *vide supra pag.* But an Intimated assignation for Love and favour, was found Reducible upon the Intimate's ^{Interest} *reducit* from fact and deed in a prior unintimated gratuitous assignation 15 July 1675 *Alexander contra Lundies*. A person having assigned a Sum to one and thereafter the same Buyer took a part of it to Another, which partial assignation was found and referred to the total assignation: It was found that assigny to the part of the sum could not Disown the total assignation, or pretend Ignorance hereof, 15 Feb. 1637 *Lawder contra Goodwife of White Kirk*.

All Exceptions upon payment, Compensation, &c. That Lay against the Debent before Intimation, are competent against the assigny. For *Memo plus Juris Aliter tribut quam ipse habet. Et quisque se ire debet Concilium eius cum quo Contrahit.* And the Assigny qui Utitur Intimatione is in no better Case than the Debent, except in the manner of proof by the Debent's oath, of which I shall speak hereafter. Therefore as Minors cannot be pursued by their tutors or Curators ante Redditas Rationes, the former till they have had Retention of what may be claimed from them by the latter: So execution upon a Minors Bond cannot proceed at the Instance of his tutor or Curators assigny, till he the assigny hath cleared his Counts 2 Decemb. 1679 *Glelane contra Baillie of Laming town*. A Life renter having let a tack for a certain Number of Years and obliged himself not to remove the tenant till he had got payment of assigny

that personal obligation was found effectual against the life renter assigny 18 Decemb. 1668 *Swinton contra Brown*. Albeit such an obligation would not have Defended against a Singular Successor In reals passing by Infeftment: And assignation to the profits of a right Kilted with Infeftment is no longer effectual, than the Kilt: *able Right* continues in the Fedents person, *Fac. Pral. 17 Decemb. 1622 L. Kilbrackmont contra Ainslie*. And an assignation to a yearly annual rent out of tithes set in tack, was disappointed by an assigny of or assignation to the tack 6 Feb. 1666 *Hallon contra Gilmory* *Stair lib. 3 Tit. 5. S. 6.* The Debent's oath does not Intimate, prove against a Gratuitous assigny, or an assigny for the Fedents behoof 16 June 1665 *Wright contra Shiel* 13 June 1666 *Jack contra Mount* 18 Decemb. 1668 *Swinton contra Brown*. because it were a greater wrong to the Debent, to be cut off from the means of proving in the Fedent's oath, than the assigny who is understood to take the Debt tacitly Quodis with little scrupling can sustain by it: especially considering, that it cannot be presumed, that he who freely gifted to the assigny, will incur fault to his prejudice. Where an assignation is granted for a cause not adequately oneros, the Fedent's oath will prove against the assigny, in so far as the value of the subject assigny exceeds the oneros Cause 23 Feb. 1679 *Shiel contra L. Swinton*. But the Debent's oath will not prove against an assigny for an oneros cause, unless the matter was litigious by a competent process, before the assignation be Intimated *Stair lib. 3 Tit. 1 S. 18 M'Kenzie Just lib. 3 Tit. 5 S. 4 S. 29* June 1673 *Somervell contra D. Deil* being assigny after a Bill of Suspension thereof had passed against the Debent, that passing of the Bill without Intimation would render the matter litigious so as to give the Debent the benefit of the Fedent's oath 23 July 1707 *Burton contra Hemmilton of Monkland*. Because the passing of a Bill is no Judicial Act to which any body is Petted: and before Intimation the Debent himself might have proceeded to Diligence. Nor yet was a Summons Executed only and not called within Year and Day

1668 a good good and fairly assigny being Intimate to the Debent in 1668 to Swinton 1668 contrary