

No 22.
The assigna-
tion not in-
timated.

fums pertained to William Napier; which also contained an assignation to the fums; could not prejudice the King's donatar, because it was not intimate.

Kerse, MS. fol. 54.

No 23.
The contrary
found, where
a third party
concerned.

1615. *January 19.* STEWART *against* MAXWELL.

IN an assignation betwixt Sir James Stewart and Alexander Maxwell, the LORDS sustained an assignation made by James Stewart of _____, to Mr John Wardlaw, for relief of his cautionry, albeit the same was not intimate before the rebellion; and that because Mr John was obliged as cautioner, by an act of Council before the rebellion, and also had taken his assignation before the rebellion.

Kerse, MS. fol. 54.

No 24.
An assigna-
tion not inti-
mated during
the cedent's
life, is not
sufficient war-
rant to raise
diligence
without
transferring.

1624. *January 23.* STEVENSON *against* L. CRAIGMILLER.

STEVENSON having comprised the lands of Peppermill, pertaining to Patrick Edgar, for a debt owing to him by the said Patrick: He charges the L. of Craigmiller, superior, and of whom the lands are holden, to infest him therein, who suspends upon this reason, viz. That the said Patrick being addebted to Clement Edgar a certain sum, conform to his registate bond, the said Clement had made the L. Craigmiller assignee to that bond and decret; who, upon the same, as assignee, had comprised the said lands that same day of this charger's comprising, and which was also allowed by the Lords that same day; and so the property was consolidate with the superiority; and he being equal in diligence, ought to be preferred, and ought not to be compelled to receive this charger.—This reason was not found relevant; for the LORDS found this comprising null, seeing it was deduced by the L. Craigmiller, as assignee, by Clement Edgar, which Clement was deceased before the denunciation of the comprising; and the said assignation not being intimated in the defunct's time, before he died, the LORDS found, That no execution could summarily be used, at the assignee's instance after his decease, by virtue of an assignation, not intimated in the cedent's lifetime, except that the decret, whereto he was constituted assignee, had been first transferred, which ought to have preceded the comprising, even as the assignee could not, after the cedent's decease, charge by letters of horning the debtor, where the decret assigned was not transferred, nor the assignation intimated to the debtor in the cedent's lifetime; and this nullity was received and admitted, by way of objection in the suspension, to take away the comprising standing, albeit that a part consisted *in facto*, viz. That Clement Edgar the cedent was deceased before the comprising; but the LORDS ordained the same to be instantly proven, and would not assign a term thereto.

Clerk, *Scot.*

Fol. Dic. v. 1. p. 62. Durie, p. 100.