

1622. *November 30.* SHERRIFF FORREST *against* FRANCIS STEWART.

No 57.  
Found as  
above.

THE LORDS found, that no intimation, except ane legal and formal intimation by the assignee to the subtacksmen, who were obliged in payment of a duty *sub clausula irritanti*, could prejudice the tacksmen of an offer made to the cedent, or band him to offer to the assignee; *ad hunc effectum* to make the offer null, and to make the clause irritant to be committed. *Memorandum*, to make intimation in this clause we offered to prove inhibition, possession, and sentence, against Sir John (Murray) in other teinds of the same parochin, which fell within the compass of the assignation, and yet repelled.

*K. rse, MS. fol. 55.*

1624. *January 21.* LORD ELPHINSTON *against* ORD.

No 58.

AN assignee to a woman's liferent, getting decree of removing against the tenants, was found preferable to prior assignees, whose assignations were not intimated.

*Fol. Dic. v. 1. p. 65.\**

1624. *January 27.* STEVINSON *against* L. CRAIGMILLER.

No 59.  
Found that a  
ratification  
of an assigna-  
tion by the  
debtor was  
not equiva-  
lent to inti-  
mation.

IN the action Stevinson against Craigmiller, whereof mention is made in the other process, p. 836. the LORDS found, that a ratification made by Patrick Edgar, who was debtor to Clement, of the assignation made by Clement to Craigmiller of the debt, and decret thereupon, recovered by Clement against Patrick, was not equivalent to an intimation, and was not as sufficient, as if the same had been intimate by Craigmiller to Patrick the debtor; and therefore found the comprising deduced by Craigmiller against Patrick, after Clement's decease, who was his cedent, to be null, notwithstanding of the ratification foresaid; and albeit the said ratification was made by Patrick in Clement's lifetime, before his decease: for the LORDS found, that intimations ought to be legally made by a notary, before witnesses, which, as it was most solemn and requisite so to be done, so these were the most probable means to eschew fallset; for being otherways done, by such privy ratifications, being deeds only done amongst the parties selves, might have the greater suspicion of fallset or simulation, and had the more difficult means of trial and discovery of the same.

*Fol. Dic. v. 1. p. 64. Durie, p. 102.*

\* Lord Kames gives this case as from Nicolson. The Editor has not found any one under the above names, of that import. There are two cases in Nicolson's collection between these parties, which will appear in their proper places; neither of them regards the above subject. See General List of Names.