

may not be a good and sufficient right to defend him now, the nullities not being objected within the years of prescription. The Lords ordained the case to be heard in their own presence.

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1696. *November 27.* GORDON of SEATON and ROLLAND of DISBLAIR *against* SIR GEORGE SKEEN, and THOMAS Forbes of ROBSLAW.

CROCERIG reported Gordon of Seaton, and Rolland of Disblair, against Sir George Skeen, and Mr Thomas Forbes of Robslaw, in an action of mails and duties on a disposition. Robslaw repeated a reduction and declarator of trust, and insisted on sundry qualifications to enforce the same.

The Lords thought there was no reason, on the pretence of a declarator, to stop the action of mails and duties; and therefore decerned in that: and having advised the several articles of trust, though they seemed pregnant, yet, in regard the parties here were all alive, therefore they refused to take any trial or expiscation by witnesses, but only allowed them in this case to prove the trust *scripto vel juramento*.

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1696. *July 2, and Nov. 27.* ALEXANDER ROSS *against* ANDREW BALFOUR.

*July 2.*---ARBRUCHELL reported Alexander Ross, son to Kilravock, against Mr Andrew Balfour, Writer to the Signet; being a competition between two assignees upon their respective intimations. Alexander Ross contended his was first intimated to the debtor, by his paying a year's annualrent to the cedent, whose liferent of the sum was reserved in the body of the assignation; and the cedent's discharge to the debtor made express mention of this assignation; which was equivalent to an intimation.

ANSWERED by Mr Balfour.—Though my assignation be posterior, yet it was first legally intimated by way of instrument; and the discharge aforesaid cannot amount to a legal intimation; yea, private knowledge has not been sustained as sufficient;—Dury, *ult. November 1622, Murray; 15th June 1624, Adamson; March 14, 1626, Wishaw. 2do.* This assignation is *inter conjunctas personas, viz.* an aunt and a nephew; and so is very suspect.

REPLIED,—Though *cessio nominis* does not, *in rigore juris*, denude the cedent of the *actio directa ossibus ejus inhærens*; yet if the debtor be any way certiorated of the assignee's right, that is sufficient to put him *in mala fide*;—*l. 3. C. de Novat. l. ult. D. de Transact.*

The Lords, before answer, allowed the Ordinary to try if the first assignation was a delivered evident, or retained by the cedent; though she had an interest to do so, in respect it bore a reservation of her liferent; but being among so near relations, this was not so much regarded: as also to try if the second assignation was onerous or gratuitous; for if it was not onerous, then it was a contravention of the warrandice by which the cedent stood debtor to the first assignee; as was found, *15th July 1675, Alexander against Lundies.*

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*November 27.*---ARBRUCHEL reported again the competition between Mr An-

drew Balfour and Ross, mentioned 2d July 1696 ; and the Lords now prefer Mr Andrew, the last assignee, not so much because he had the first legal intimation by a notary's instrument, (for the Lords agreed there might be several other legal ways of intimating and completing assignments beside that,) but also in respect of the circumstances, that the *second* was onerous, and the first *inter conjunctas personas*, an aunt and a nephew ; and there appeared some design of fraud in cheating Mr Balfour.

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1696. *November 27.* ELECTION of COLLECTORS and CLERKS for the COUNTY of FIFE.

THE Lords decided the double elections of two collectors and clerks in the shire of Fife ; the one by the Countess of Rothes's party, and the other by the Earl of Melvil's, sent down to the Lords by a remit of Privy Council. The Lords found the commissioners named by the Privy Council in 1695, not being renewed by the Act of the Cess in 1696, had no right to vote in choosing the clerk and collector ; and that the Earl of Melvil and his party's separating and removing to another room in the same tolbooth was just and reasonable, and no ground of nullity of his election, he having the major part of the Commissioners ; though all judicial acts should be done *in loco solito et consueto* ; and therefore they annulled the election of Douglas of Strendry and Bayne ; and declared the other election of Captain Crawford of Morquhannie, and John Orrock, legal and warrantable. It was urged, that lately the Privy Council rejected an election of a president of the College of Physicians, because it was made in a separate clandestine meeting ; (but there the court was constituted before the secession, with sundry other specialties ; besides, Council decisions are no practicks nor rules to the Session ;) Dr Trotter's election being found more orderly and regular than Dr Stevenson's ; because the Presbyterian doctors adhered to Dr Trotter, and for other state reasons.

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1696. *December 2.* IRVING of DRUM *against* MR ROBERT KEITH of LUNTUSH and IRVING of FEDERAT's other CREDITORS.

IN the declarator of commission of the irritancy pursued by Irving of Drum, against Mr Robert Keith of Lentush, and Irving of Federat's other Creditors ; Cumming of Culter, as a creditor, compearing for his interest, and craving to be admitted as a pursuer, the Lords found neither he nor Drum had now interest to nominate a buyer of the lands, conform to the minute and articles of agreement ; because that faculty was already exercised by Federat, within the time prefixed by the articles, in naming Mr Robert Keith as the buyer ; and that the discharge of the articles given by Federat afterwards to Drum cannot prejudice Mr Robert Keith, because after his intimation, and that he had inhibited Federat ; and found the irritancy still purgeable. Yet, where one restricts himself by way of favour, having paid an adequate price, there a failie is not purgeable, that not being *pactum legis commissoriae in pignoribus* ; as was found, 20th