

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. *Vol. I. Page 738.*

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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. *Vol. I. Page 738.*

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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 commissoriæ in pignoribus* ; as was found, 20th

June 1664, *Scot against Falconer*. Then it came to be debated on whose peril the consigned money lay, whether on Lentush and Tolquhon, the consigners', or on Drum's; and who should lose the year's annualrent since the consignation.

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1696. ROBERT BLAIKWOOD *against* SIR A. PURVES OF PURVESHALL and SIR WILLIAM PURVES'S REPRESENTATIVES.

1696. *July 8.*---MR Robert Blaikwood, merchant, against Sir A. Purves of Purveshall, for the Lady Ross's part of Sir William Fleming's executry, lying in Sir William Purves's hands. The defence for Sir William Purves's representatives was,---Their father had a decret of exoneration from the Lords, and, in obedience thereto, had paid in the Lady Ross's share, with the rest of her brothers' and sisters', to the Lord Ramsay, their father, and obtained his discharge.

ANSWERED,---By the decret the bonds are indeed to be delivered up to the Lord Ramsay; but, withal, there is also another provision, that the executors discharge for themselves, and with consent of their curators, such of them as are minors; whereas there is a plain antithesis and contradistinction in the executors of Wigton's family, where the Earl's discharge alone is declared sufficient for them all; and so the payment to the father was altogether unwarrantable *quoad* her part, she being forisfamiated and married, and the Lord Ross, her husband, called in the process, and she *sub ejus tutela et potestate*, and yet the discharge was not granted by him.

The Lords considered double payments were odious, and that there was a probable ground of mistake here in Sir William Purves, which might amount to a *bona fides*, and they had never insisted in his lifetime for ten or twelve years; therefore they desired to hear it farther in their own presence how far these circumstances could take off the unwarrantable payment. *Vol. I. Page 726.*

*December 2.*---The pursuit, Mr Robert Blaikwood against the Representatives of Sir William Purves, mentioned 8th July 1696, being heard in presence; after long arguing, the Lords sustained the payment made by Sir William to Lord Ramsay for his children, and his discharge thereupon; albeit Lord Ross, husband to one of the executors, was not a consenter to the discharge; seeing, by the decret, the bonds and money were both made payable to the Lord Ramsay. *Vol. I. Page 739.*

1698. *January 29.*---Mr Robert Blaikwood, merchant, having pursued Purves of that ilk, as representing his grandfather, for the share of Sir William Fleming's executry, which fell to Lady Jean Ramsay, Lady Ross, whereunto Mr Robert had acquired right,---and the Lords, having assoilyied Purveshall from the pursuit, (as mentioned 2d December 1696,) he protested this day for remeid of law to the Parliament.

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