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. *Vol. I. Page* 737.

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.* *Vol. I. Page* 738.

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, 15*th July* 1675, *Alexander* against *Lundies.*

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