

the first intimation. There are mutual reductions raised by both parties of these assignations, wherein it was *alleged*, for Anna Alexander the first assignee, that the posterior assignation ought to be reduced, *1st*, Because the cedent, when she granted the same, was in a present expectation of death, and was not *compos mentis*, and having recovered, she disclaims the same, and hath confirmed her assignation to Anna Alexander, and concurs with her. *2^{dly}*, The posterior assignation ought to be reduced, as being fraudulent and null, contrary to the act of Parliament against double assignations and dispositions, and contrary to the act of Parliament 1621, against bankrupts; for the first assignation being granted, it imports a warrandice from the cedent's own voluntary deed, though it were not express, and the first assignee is creditor as to that warrandice, and thereupon may reduce any posterior assignation, without cause onerous, as being in prejudice and defraud of that warrandice. *Ita est*, This posterior assignation bears expressly for love and favour. It was *answered* for the posterior assignees, That they repeated the reasons of reduction, viz. that albeit their assignation was posterior, yet it was the more preferable right, because it was first intimate; and albeit a prior assignation for onerous causes might be a ground to reduce a posterior, yet where there are two rights, both gratuitous, that which is first compleat is preferable, and can never be reduced upon a prior gratuitous right incomplete; and albeit this prior assignation bear causes onerous, yet being granted betwixt aunt and neice, it is not instructed by its own narrative, but must be proven.

THE LORDS found the first reason relevant upon the incapacity of the cedent, to be proven by the physicians, and other witnesses above exception that were present; they found also, that though the posterior assignation, first intimate, was the preferable right, so long as it stood, yet it was reducible upon the first assignation, and the warrandice express, or implied therein, unless the posterior assignation had been for onerous causes.

Fol. Dic. v. 1. p. 69. Stair, v. 2. p. 347.

1695. December 11.

BLAIR *against* AUSTIN.

PHESDO reported Alexander Blair of Corbs, &c. against Thomas Austin and the Hospital of Perth. Agnes Blair, by her contract with Austin, had power at her death to dispone, legate, or assign 1200 merks, as she pleased. In her *liege poustie*, she assigns it to Alexander Blair, and others, reserving the power of 100 merks for her funerals. Afterwards, on her death-bed, she makes a second right of this to Austin, her husband's children, and 200 merks of it to the poor of the hospital of Perth. The two assignees competing, it was objected for the second, that the faculty reserved to her bore a power to dispose at her death, as their's was.—THE LORDS repelled this, as importing a power any time before her death. Then *alleged*, It was but of the nature of a legacy, because it bore the word

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reducible upon the act 1621; the first assignation being considered to be an anterior debt, by the warrandice contained in it. Both assignations were lucrative and gratuitous.

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Found in conformity with Alexander against Lundie, *supra*.

No 65.

legate, and so might be revoked by the second.—*Answered*, These words of style were explained by the clear words whereby she made them her irrevocable assignees and assignees, and excepted only 100 merks to herself, *et exceptio firmat regulam in casibus non exceptis*.—THE LORDS found the plain words over-ruled the dubious, and preferred the first assignation. Then it was objected, that the second assignation was first intimated.—*Answered*, It is null, and reducible on the act of Parliament 1621, I being an anterior creditor by the warrandice of the assignation; which the Lords found, albeit they were both lucrative and gratuitous assignations. But, in regard the first assignees offered once to suffer the Hospital to be preferred for their pious legacy, therefore the Lords would not permit them to refile from that consent, and accordingly preferred them *quoad* the 200 merks.

Fol. Dic. v. 1. p. 69. Fountainball, v. 1. p. 686.

1699. February 7.

HAY against HAYS.

No 66.

Found in conformity with Alexander against Lundy, No 64. p. 940.

IN a competition betwixt Anne and Helen Hays, daughters to Leyes, and John Hay of Pitfour, being two assignees to one sum; Pitfour craved preference on his posterior assignation, because it was first completed by intimation.—*Answered*, Where both the rights are gratuitous and lucrative, the first, whether intimated or not, is preferable on the act of Parliament 1621, because the second is granted in prejudice of my warrandice, which, even in donations, is from all future facts and deeds, as was expressly decided, 15th of July 1675; Alexander *contra* Lundy, No 64. p. 940. *2do*, The sum assigned is the ground of an adjudication; and so being an heritable right, needs no intimation, as Stair affirms lib. 3. tit. 1.—*Replied*, The second assignation bears onerous causes, besides the narrative of love and favour, and the adjudication is posterior to the first assignation.—THE LORDS having read both assignations, they found neither of them were onerous; and therefore, on the clause of warrandice, preferred the first, though not intimated.

Fol. Dic. v. 1. p. 69. Fountainball, v. 2. p. 41.

1706. January 24.

WILLIAM WILSON Merchant in Edinburgh, against the LORD SALINE.

No 67.

Found in conformity with Frazer against Phillorth, No 62. p. 938.

WILLIAM WILSON having right by progress to a base infestment of annual rent out of Alexander Short's estate, expedie in May 1661, but never clothed with possession, pursued reduction against the Lord Saline, of a disposition granted to him by the said Alexander Short, his brother-in-law, completed by a public infestment in February 1662; as being a presumed gratuitous deed to a conjunct person in prejudice of the pursuer, a prior lawful creditor. The defender pro-