

No 5.
had an assignation thereto from the defunct.

ed by the Earl of Murray, whereupon he convenes the Earl as debtor, and Mr John Dougal as executor, for his interest, to pay the special legacy. The Executor *alleged*, That the sum belonged to him, because he had assignation thereto from the defunct, before the legacy. The pursuer *answered*, That, *hoc dato*, there was sufficiency of free goods to make up this legacy; and albeit it had been *legatum rei alienæ*, yet being done by the testator *scienter*, who cannot be presumed to be ignorant of his own assignation, lately made before, it must be satisfied out of the rest of the free goods;

Which the LORDS found relevant.

Fol. Dic. v. 2. p. 309. Stair, v. 1. p. 205.

1669. February 16. GILBERT M'CLELAND *against* Lady KIRKCUDBRIGHT.

No 6.
A conveyance, *per am-bages*, may be effectual, where, if directly done, it would not be sustained.

THE said Gilbert being infeft in an annualrent out of the lands provided to the Lady in conjunct fee before her infeftment, and long thereafter having got a new infeftment for the whole bygone annualrents accumulate in a principal sum; in competition betwixt them for preference, the LORDS found that M'Cleland ought to be preferred for the whole annualrents yearly of the sum contained in his first infeftment; but as to the annualrent of these annualrents, as being accumulated and made a principal sum, whereupon the new infeftment was granted, they found that the Lady ought to be preferred, in respect her liferent infeftment was prior thereto, so that it could not be drawn back in prejudice of her right;—notwithstanding, it was *alleged*, That if M'Cleland either had, or should yet comprise for the whole bygone annualrents, undoubtedly he would be preferred to the mails and duties for the whole sums contained in his infeftment; for the LORDS found there was a difference betwixt voluntary rights and legal diligence, and the contract to make the annualrent a principal to bear annualrent was odious, and posterior to the Lady's right.

Fol. Dic. v. 2. p. 309. Gosford, MS. p. 43.

* * Stair's report of this case is No 44. p. 10648. *voce* POSSESSORY JUDGMENT.

1675. July 8. SCRYMGEOUR *against* The Earl of NORTHESK.

No 7.
Found in conformity to M'Cleland *against* Lady Kirkcudbright, *supra*.

UMQUHILE Major Scrymgeour being infeft in the lands of Achmethie, upon an apprising deduced against Guthrie of Achmethie's daughter, Margaret Scrymgeour being infeft as heir to him, pursues a reduction of a disposition, and infeftment of the same lands, granted by Achmethie to the Earl of Northesk's father, then designed Earl of Ethie, upon this reason, that the Major's infeftment, upon his apprising, was long prior to Ethie's infeftment. The defender *alleged*, Absolvitor, because, though his father's infeftment was posterior,