

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-