

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.

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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.

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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