

1622. *December 17.* GEORGE MELDRUM *against* the LAIRD of Anstruther.

No 39.

THE LORDS found an assignation to farms null, because not intimate before the comprising of the property, or denunciation to comprise.

*Kerse, MS. fol. 55.*

1673. *July 23.* LAIRD BARNBARROCH *against* the VISCOUNT of Kenmore.

No 40.  
Assignation  
intimated in  
the cedent's  
lifetime,  
needs no  
transference.

PATRICK KINCAID having obtained decret against the Viscount of Kenmore, the Viscount suspends. Patrick assigned the right to his son, who transferred the same to Barnbarroch; who thereupon called upon a copy in the name of Patrick Kincaid, and as assignee craved protestation; which the LORDS found he might do; seeing the assignation and translation was intimate in Kincaid's lifetime, and so needed no transference.

*Stair, v. 2. p. 220.*

1678. *February 12.* FRAZER *against* FRAZER.

No 41.  
Before inti-  
mation, the  
cedent's oath,  
is competent,  
to the preju-  
dice of the  
assignee.

HUGH FRAZER of Easter-tyre, and Frazer of Streichen, as cautioner, having granted a bond of 1000 merks to Alexander Frazer, who assigned the same to Robert Frazer, in whose name process was intended against Streichen the cautioner; who *alleged* absolvitor, because he offered him to prove by Robert's oath, that the pursuit was to the behoof of the Lord Salton, his son or grand-child in his family; and by the Lord Salton's oath, that the same was paid or compensated. —It was *answered*, That granting the pursuit was to the behoof of William Frazer oye to the Lord Salton, who produces a translation from Robert Frazer, and thereby might proceed in his author's name or his own; but when any thing is referred to the cedent's oath, he may exclude the same by the translation; it being a certain rule, that the cedent cannot depone in prejudice of the assignee. —It was *replied*, That the process being in the cedent's name, intended before any intimation, becomes thereby litigious; and an assignation or translation, though prior to the pursuit, yet not being intimate before the pursuit, and thereby the cedent not being denuded, his oath is competent against the assignee.

Which the LORDS sustained, and ordained the cedent to depone.

*Stair, v. 2. p. 612*