

1581. *June.* LD of STRATHURD *against* STEVEN.

No 40.

One who has a liferent tack cannot dispose of it to another, even for his own life, without consent of the proprietor.

THE Laird of Strathurd pursued ane Steven and his wife to flit and remove from certain of his lands. It was *answered* by the said Steven and his wife, for ane part of the lands, That they ought not to flit and remove, because there was one Nicol yet on life, who having the liferent of the said lands disposed to him by Strathurd, by virtue of a contract, the said Nicol had transferred his liferent, and had made right thereof to the defender and his wife, and he was in possession, by virtue thereof, in paying of his mails and duties. To this was *answered*, That albeit the disposition of the liferent was made by Nicol, yet there was no power to him to dispone to any other person, or to transfer or make assignee, the which he might not do except special mention had been made of the same in the tack, *quia non potuit intervertere possessionem domini absque illius consensu*, and to put in another. The matter among the Lords, some of them were of that opinion, that the said Nicol, being liferenter, had no power to dispone or transfer his liferent without consent of his superior, and the seller thereof to him; for, otherways, the inconvenience would be great, that the tenant may applace and input tenants *by* the advice and consent of his overlord and master, *quod fuit res præjudicii*. Formal *assedationes* or *locationes*, except there be special and express mention of assignees, it is not permitted to make an assign. *Alii dominorum aliter consenserunt, ut hæc questio breviter et abruptum fuit agitata*, that he, to whom the liferent was disposed, being on life, might either transfer or make alienation of the same, *quia liber potuit uti re sua, in qua dominium habebat, vel quasi*, and if a person may sell or make *procuratorem in rem suam* of his liferent that is set to him, much more may he transfer or set the same, *et propter cognationem et affinitatem inter emptionem et locationem pari jure incidunt; D. Loc. Con.* To this was *answered* and *reasoned*, That, of the practise of Scotland, the liferent of a person might be disposed and taken from him *ex causa necessaria*, *utpote* by comprising and falling in the Prince's hands by escheat, but *dispositione voluntaria* he could not dispone the same *by* the advice and consent of the seller thereof to him. The which allegiance the LORDS admitted, and repelled the exception; *licet bona pars dominorum in contraria fuerunt opinione*.

Fol. Dic. v. 2. p. 75. Colvil, MS. p. 303.