

V I R T U A L.

SECT. I.

Virtual Assignation.

1628. *March 25.* LORD BLANTYRE *against* PARISHIONERS of BOTHWELL.

IN a case where the teind-sheaves payable by the respective heritors, were assigned by the tacksman in security and payment of a debt, this was only found a personal right, though clad with possession, and a posterior assignee to the tack itself was found preferable, as being the only real right.

No. 1.

Durie.

* * * This case is No. 37. p. 6434. *voce* IMPLIED DISCHARGE.

1629. *March 20.* L. FINMOUTH *against* WEEMS.

The Laird of Kinraig, in his son's contract of marriage, being obliged to infest his daughter-in-law in certain lands, and therein obliging himself to warrant these lands to her free of all teinds, except the payment of seven bolls of victual yearly, for these are the very words of the contract; the father-in-law being then tacksman of these teinds for payment of the said tack-duty, and, after the son's decease, the relict continuing divers years in possession of these lands and teinds for paying of this duty, the good-father being still in life; thereafter the good-father, in another contract of marriage of one of his daughters, for security of the sums promitted in tocher to his good-son, makes him assignee to his said tack of the said teinds; whereupon the relict foresaid of his son is pursued for the said teinds of the lands provided to her by her said contract of marriage; who opposing the foresaid clause of the contract, bearing her father-in-law to be obliged to warrant the said lands to her free of all teinds, except the said seven bolls, which she

No. 2.

A party warranted lands to be free of teind, This held to be a virtual assignation of a tack of the teinds.

No. 2. alleged, with her possession sensyne, to be as good to her as if she had obtained an assignation to the tack, or had been made sub-tackswoman; and the other alleging, that it was only a personal bond, which obliged himself and his heirs, and could not exclude the real right now standing in the person of a singular successor, who had valuably acquired it *ex causa onerosa*; the allegiance was sustained, and the clause was found sufficient to maintain the defender in her right to bruik the lands against any whosoever claimed right to that tack.

Act. Aiton.

Alt. Nicolson.

Clerk, Gibson.

Durie, p. 440.

1667. January 22. ISOBEL FINDLASON *against* LORD COWPER.

No. 3.

Effect of a precept to pay, directed to one, who writes on the bottom of it a precept on another.

Elphinstoun of Selmes having given a precept to Isobel Findlason, and directed to the Lord Cowper, that he should pay to the said Isobel a sum owing by Selmes to her, and receive Selmes' bond from her, upon the foot of which precept, the Lord Cowper directs another precept to James Gilmore to pay the said sum; the woman not being paid, pursues both the Lord Cowper and James Gilmore for payment. It was alleged for James Gilmore, Absolvitor, because he had not accepted the precept, neither was there any ground alleged for which he was obliged to accept, or pay the Lord Cowper's precept.

Which the Lords found relevant.

Stair, v. 1. p. 428.

1667. July 2. SINCLAIR *against* COUPER.

No. 4.

A disposition of lands found imported by an assignation to the mails and duties in all time coming.

An assignation being made to mails and duties of a tenement of land, for the year in which it was granted, and in time coming without limitation, the Lords found, That the heir of the cedent ought to give a formal and valid disposition of the land, whereupon the assignee may be infest; seeing, otherwise, he could not be secure as to a perpetual right to mails and duties against a singular successor; et concessio jure conceduntur omnia sine quibus explicari non potest.

Dirleton, No. 89. p. 37.

* * Stair reports this case:

Umquhile Mr. John Rae having two sisters, and heirs portioners, the one married to Robert St. Clair, and the other to umquhile Alexander Cowper, the said Alexander and his spouse, as heir portioner, assigns to Robert St. Clair a number of her brother's bonds, and likewise, as heir, assigns him to the mails and duties of a tenement of Mr. John's, for such terms, and in time coming. Sir John St.