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Possession is so far essential to the conveyance of a lease in security of debt, that without it the assignee has only a personal right, consequently a subsequent assignee or adjudger getting first into possession would be preferred. At the same time, were a process of adjudication to be brought, the assignee might insist to be put into possession before the right of the adjudger could be completed, and a summary application to the Judge Ordinary to that effect would be competent.

The intimation, in the present case, had no effect in completing the right. When the principal lessee assigns his lease, the right of the assignee is completed by intimation to the subtenants, requiring them to pay their rents to him; when again the subtenant is the granter of the assignation, the right of the assignee can only be completed by actual possession of the subject, though, in the mean time, an intimation to the principal lessee may be proper in order to render the transaction public. It is no objection to the intimation, that it took place after the bankruptcy of the cedent. That event does not prevent creditors from taking any step for their own safety, which can be done without the intervention of their debtor.

THE LORDS, by a considerable majority, 'altered the interlocutor reclaimed against, repelled the objections to the interests produced for the petitioners, (assignees), 'and preferred them upon the funds *in medio*, arising from the sale of the lease.'

A reclaiming petition was refused without answers, on the 24th June 1794.

Lord Ordinary, *Stonefield*.  
D. D.

For the Assignees, *Dav. Williamson*. Alt. *Montgomery*.  
*Fol. Dic. v. 3. p. 152. Fac. Col. No 122. p. 272.*

## S E C T. IX.

## Assignees with Apprisers and Adjudgers.

1637. March 2. SMITH *against* HEPBURN and BARCLAY.

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Assignation  
intimated,  
preferred to  
a posterior  
comprising,  
although the  
denunciation  
was made be-  
fore intima-

ONE Barclay having made Geills Smith assignee to a bond of money addebt-  
ed to him, after which assignation, one Hepburn, creditor to Barclay, having  
denounced this bond to be comprised; after which denunciation, the prior as-  
signee intents summons against the debtor of the sum assigned for the payment  
thereof to him as assignee, which he alleged to be a sufficient intimation, and  
whereby he craved preference to the compriser, who, although he had denoun-

ced before his said intimation, yet seeing he was assigned long before, and had summoned the debtor assigned, which was his intimation, before the completing of the comprising, his prior intimation, before the comprising, and prior assignation, before the denunciation, ought to give him preference; even as if one had acquired an heritable disposition of his debtor's lands, if any other creditor had thereafter denounced these lands to be comprised, before he had perfected charter and sasine upon that prior disposition, the said denunciation and comprising following thereon, would never have preferred him to the said prior disposition, and charter and sasine perfected thereafter. THE LORDS preferred the prior assignee, being a lawful creditor, albeit a conjunct person, to the said posterior compriser; and found the denunciation made by the compriser before the intimation of the assignation, was no just cause to give the compriser preference to the assignee, but sustained the said assignation, although intimate after the denunciation, which denunciation, the Lords found did not affect the sum to the denouncer, nor made it to be so real, but that notwithstanding thereof, the assignee might perfect his intimation effectually thereafter; and yet an arrestment after assignation will be preferred to that assignation, if not intimate before.

*Fol. Dic. v. 1. p. 180. Durie, p. 834.*

1750. November 16. THOMAS WALLACE *against* CAMPBELL of Inveresragan.

ARCHIBALD CAMPBELL vintner in Inverary, having built a large inn for promoting his business, obtained from the Duke of Argyle a tack, commencing at Whitsunday 1740, to endure for three nineteen years, at the old tack-duty of 50 merks. Having contracted considerable debts, and being pressed with diligence, particularly at the instance of John Somervil, merchant in Renfrew; Campbell of Inveresragan, his brother, agreed to take off his debts upon getting a proper security; and the only one that could be given was a conveyance to the said tack, with the household plenishing. The plan concerted was, that Archibald should have a sub-tack for eleven years at a moderate rent, in which time, it was hoped, that the profits of his business might relieve him from his debts; and Somervil was brought into the concert, who consented to accept of L. 7 Sterling yearly from Archibald out of the rent to be paid by him to his brother for the sub-tack. This tripartite agreement was executed in the following manner: A disposition is granted by Archibald to his brother Inveresragan, dated 31st October 1741, which, after narrating the several debts above mentioned, extending to the sum of L. 324, 12s. Sterling, and subsuming that Inveresragan had agreed, upon getting the disposition, to relieve the disponent of the said sums, and for that effect to make payment thereof; 'therefore, for Inveresragan's further security, and better enabling him to make payment of the said sums, Archibald assigns to him his above mentioned tack

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tion of the assignation; because a denunciation does not affect the sum, nor make it so real, but that the assignee may effectually perfect his intimation thereafter.

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A person assigned a tack of a house to his brother, and his brother became bound to relieve him of his debts, some of which, however, he concealed. The brother granted him a sub-tack for a moderate rent. A creditor afterwards adjudged the tack. The brother pleaded preference on his assignation, alleging he was in possession by his sub-tacksman. The adjudger was preferred.