

No 64. tained against a tacksman.—Thereafter it was *alleged* for Alexander Kennoway, That he was assignee to the tack, and responsal; and no such action could be sustained against him, but a declarator of circumvention might be pursued. It was *replied*, That, by the said tack, the said Hugh had no power to assign, it being granted to him and his sub-tenants, of no higher degree than himself.—THE LORDS did repel the allegiance; and found, that the tack being conceived, as said is, could not be assigned.

*Gosford, MS. No 431. p. 222.*

1673. January 29.

OGILVIE against KINLOCH.

No 65.  
One who dis-  
posed certain  
lands to be  
holden of  
himself, by  
'the dispo-  
nee, his heirs  
and assign-  
ees,' was  
found obliged  
to receive and  
infest the as-  
signee.

DAVID KINLOCH having, by a minute betwixt him and Andrew Wadder, disposed certain lands to Wadder, to be holden of Kinloch feu; Wadder assigns the minute to Mr James Ogilvie, who pursues for extension and imple-ment of the minute to him as assignee. The defender *alleged*, That, by the minute, he having disposed to Wadder, so as to remain his own vassal, whom he had chosen; Wadder could not, without his consent, force him to accept of another vassal; much less of Ogilvie, who was not in the terms of friendship with him. It was *answered*, That the pursuer opposes the minute, whereby the lands are disposed to Wadder; and albeit neither the heirs nor assignees are expressed, yet, in a subsequent clause, it is expressed, that the lands are to be holden of the disponer by Wadder, his heirs and assignees; and it is commonly known, that, albeit superiors be not obliged to receive the singular successors of their vassals, by resignation or confirmation, even though the vassal's right be expressly granted to heirs and assignees; yet the inserting of heirs and assignees operates this, that, before infestment be taken by the first acquirer, he may effectually assign his disposition or precept to any other, whom the disponer must receive.

THE LORDS found the defenders obliged to receive the assignee, in respect the minute did mention assignees.

1673. December 23.—BANDOCH having obliged himself to grant a feu to one Wadder, of a piece of land, Wadder obtained decret, and charged him. He suspended, and the charger having assigned the bond to Mr James Ogilvie, he insists in the charge, for granting the feu to him as assignee. It was *alleged*, That the obligation being in favour of Wadder to be his vassal, he could not obtrude a stranger, who was not in friendship with Bandoch; *2do*, Bandoch having consigned a disposition in favour of Wadder, it was in the same case as if Wadder had been infest; and then Bandoch could not be forced to enter his assignee, without a year's rent, for the entry of a singular successor.

THE LORDS repelled both these reasons; and found, that the obligation being in favour of Wadder, his heirs and assignees whatsoever, he might assign

it to whom he pleased; and that it was to be performed to the assignee in the same case as to the cedent, without any entry, seeing the cedent was never infest.

No 65.

*Fol. Dic. v. 2. p. 76. Stair, v. 2. p. 163. & 246.*

\* \* \* Gosford reports this case :

1673. *January 29.*—DAVID KINLOCH of Bandoch being obliged, by a bond, to obtain from his father a sufficient infestment of the mill and mill-lands of Aberbrothick, to be holden feu of himself, to Andrew Wadder and his heirs, and to enter them for payment of L. 20 Scots; whereupon being charged, and suspension raised, compearance was made for Mr James Ogilvie of Clunie, who had obtained assignation from Andrew Wadder, and craves that the disposition may be granted to him and his heirs, in place of his cedent. It was *alleged* for the suspender, That he being obliged to infest Wadder and his heirs, without mentioning his assignees, that he was not obliged to grant a right to him, seeing his minute and bond being in favour of a new vassal and his heirs, there was *electio personæ et familiæ*; and it was not in the power of the new person chosen to be the vassal to obtrude upon the superior another, specially this Ogilvie, who was of greater quality, and with whom Bandoch had several pleas and lawburrows standing against him; *2do*, If Wadder was infest, which he was willing to grant, upon his resignation, he was not obliged to infest Ogilvie, or any other, unless he were charged upon a comprising or adjudication, *quo casu*, he would get an year's duty. It was *answered* for Ogilvie, That, albeit infestment were passed, the superior was not obliged to accept a resignation in favour of another; yet, so long as the bond to grant infestment remained a personal bond, it might be assigned or comprised.—THE LORDS did, notwithstanding, find the letters orderly proceeded; which was hard.

*Gosford, MS. No 564. p. 305.*

1674. *December 3.* COCKBURN *against* The LORD SINCLAIR.

THE Lord Sinclair having married his daughter to the Laird of Harmiston, did, in a contract of marriage, dispoise the whole estate, with burden of his debt, and did retain only for his aliment 8000 merks yearly, and that he might have the less trouble by arrestments of creditors, Harmiston gave bond to Pilton, for paying him 8000 merks yearly, during the Lord Sinclair's life. Thereafter Pilton obtained a gift of Exchequer of Harmiston's escheat and liferent, and gave a backbond, bearing, that, after the debt of the horning, and expenses of the gift, the benefit thereof should be applied, in the first place, for payment of this annuity of 8000 merks yearly. Thereafter there is a gift of escheat of the Lord Sinclair, granted to Mr George Gibson, who gave a back-

No 66.

An aliment granted by the king was found not affectable by the grantee's creditors, though bestowed *ex pietate* only, and not for services.