

1623. March 20. LO. CRAIGIE *against* his TENANTS.

No 34.

THE LORDS found a rental null *in toto*, by way of exception, because the rentaller assigned the hail, or most part, of the rentalled lands, without consent of the heir; and found, if the most part was not annalzed, that no more could fall but that which was disponded.

Item, the LORDS found, that the receiving of the duty from the Tenants, to whom the rental was assigned, purged the failzie; it being proven, that the master knew that he had disponded the rental to him.

Fol. Dic. v. 1. p. 433. Kerse, MS. fol. 119.

* * Haddington reports the same case :

1623. March 21.—THE Laird of Craigie Wallace pursued his Tenants of Prestalshiells and others, to remove. In that cause it was found, that a rentaller may not make assignation of, or subtack of the lands rentalled, and if he do in the contrary, the alienation of the hail or maist part of the lands makes him to tyne his hail rental, and if it be of the least part of the lands, he only loses so much as he sets or assigns. Next, that he who, by his rental, has express power to input and output tenants, and extend the land to the best avail and profit, may set it in hail or in part, to any tenants of no higher degree than himself. That if he make an assignee to his rental, not having power given by the master, he tynes his rental, and if he have power to make an assignee or set a subtack, that power is not extended to the assignee, who, making disposition of the hail or maist part without the landlord's consent, tynes his right of the assignation and rental, which returns not to the cedent, but to the granter of the rental. That he who was personally rentalled, obtaining thereafter licence to make assignees, and subtenants frae him who was the King's vassal of the barony for the time, albeit under reversion, that licence purges the danger of alienation, albeit the lands be redeemed or renounced by him who was publickly infeft, in favour of Craigie before the warning. Last, it was *alleged*, That the defender should be assoilzied, because the pursuer had, by himself, or his factor, who had made count to him, recovered payment of the duty of the rental from him to whom the rentaller had set tack, the Laird knowing that he was tenant to the rentaller, which was found relevant, the Laird's knowledge being ordained to be proven by writ or oath of party. Thereafter the defender offered to improve the execution of the summons, which the Lords admitted, albeit it was not proponed *dilatorie* in the beginning of the cause, but after five or six peremptors discussed; nevertheless the LORDS, for the most part, admitted the exception of improbation of the execution, in that place, *me aliter sentiente*.

Haddington, MS. No 2824,

* * See Durie's report of this case, *voce* IRRITANCY.

The subject, IMPLIED DISCHARGE and RENUNCIATION, continued in Vol. XVI.