

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.

Clair, having apprised Robert St. Clair's right, pursues John Cowper, as representing his father, to hear it declared, that this perpetual assignation to the mails and duties did import an absolute disposition of the lands, and did carry in consequence an obligation, and all things to make the disposition effectual, and so to renew it into a legal form, containing a procuratory and precept. The defender alleged, Absolvitor, because his father had granted no disposition, but only an assignation, and so the defender could be obliged to do no further. The pursuer answered, That this assignation behoved to be understood *cum effectu*, and to be done to denude the granter, and to settle the right of the duties in the purchaser, and therefore, whosoever gives the right gives all necessaries in his power to accomplish it; and the informality of a clerk ought not to evacuate the pursuer's right.

No. 4.

The Lords sustained this process, and found this right to import a perpetual disposition.

Stair, v. 2. p. 466.

1699. *January 5.*

MARGARET FULLERTON, Relict of James Brand, *against* GRISSEL MUIR,
Relict of John Brand.

In a competition for mails and duties of a tenement in the Canongate, belonging to the deceased John Brand, compearance was made for Grissel Muir, the said John's relict, who craved to be preferred, because she was provided to the mails and duties of the said tenement by her husband, during her life; and because she was not infest, she pursued the heir of her husband to infest and secure her, and obtained an adjudication and infestment thereupon.

It was alleged for Margaret Fullerton, the relict of James Brand, the son: That she had right to an adjudication of the same tenement against the heir of John, which was year and day prior, and whereupon the Magistrates, as superiors, were charged.

It was answered for the relict of the father: That she ought still to be preferred, because, though Margaret Fullerton's adjudication was prior, yet her right was preferable, in so far as John Brand, her husband, was never infest in the tenement, but had only a disposition, which was a personal right; and her husband having assigned her to the mails and duties during her life, she had thereby the benefit of her husband's disposition conveyed to her for her life-rent use; and if her right had been in the best form, the same would have assigned her husband's disposition; but, however, the assignation to the mails and duties doth virtually imply a conveyance of the husband's right to these mails and duties, which, being a personal right, required no further solemnity.

The Lords preferred John Brand's relict, and found, That the husband's assignation to the mails and duties did virtually imply an assignation of his own

No. 5.

One granting an assignation to mails and duties, who had only a disposition to the lands, without infestment, the disposition was understood to be thereby so far virtually conveyed, and the assignee preferred to a posterior adjudger.