

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.

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. 4.

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.

No. 5. right thereto, and his right being a personal disposition, that the same was thereby conveyed.

*Dalrymple, No. 8. p. 11.*

\* \* \* Fountainhall reports this case :

In a competition betwixt Grissel Muir, relict of John Brand, baxter in Canon-gate, and Margaret Fullerton, relict of James Brand, his son, Grissel had a disposition from her husband, assigning her to the mails and duties of a tenement in the Canongate, belonging to the said John, the father, but contained neither procuratory nor precept of sasine to complete it, or any way to make it a real right; therefore she charges her husband's grandchild to enter heir, and thereon adjudges the right of a disposition her husband had thereto, containing a precept of sasine, but whereon she was never infest; but she does now infest herself on that precept by the new act of Parliament. The right of Fullerton, the other relict, was also an adjudication of the same land, founded on debts due by the said John, and his son James, her husband, whereunto she had acquired right, and charged the Magistrates, as superiors, to infest her; upon which legal diligence, she craved preference, and objected, that Grissel Muir's adjudication was informal, seeing her assignation could not be a title to adjudge, till a previous sentence had been obtained, finding the warrandice incurred; which method was not followed. Answered, The assignation to the mails and duties during her life must necessarily imply a conveyance of all the right that was in his person at the time, as effectually as if it had been validly disposed to her; *nam concessio jure omnia conceduntur, sine quibus explicari non potest*, and the heir might be summarily charged to complete it without a decree constituting the warrandice; and so it had been decided, 2d July, 1667, Sinclair *contra* Couper, recorded both by Stair and Dirleton, No. 4. p. 16464. The Lords found, That Muir's adjudication carried all the right that was in her husband's person, and consequently his disposition, which she having completed by infestment, it gave her preference to the other adjudger, though prior.

*Fountainhall, v. 1. p. 30.*

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1710. November 30.

CHARLES M'KIE of Southfield, *against* JOHN PATON, Merchant in Edinburgh.

No. 6.

A provision, that one should not quarrel or reduce a right, but consent to and ratify

Agnes Paton, relict of Archibald Paton, merchant in Edinburgh, disposed and assigned a bond of £.1000 granted to her by the Lairds of Clackmannan and Kennet, in favours of Margaret Paton, her daughter, with this provision: "In case William Paton, late Bailie of Edinburgh, my son, shall question, quarrel, or reduce this right, then I assign her in lieu thereof to £.1000 resting by him