

No 30. 1714. *June 8.* M'DOWAL of Freugh *against* FULLERTOUN.

BEFORE intimation, the debtor is in safety to make payment to the cedent.
Fol. Dic. v. 1. p. 62. Forbes, MS.

See the particulars of this case p. 576. of this Dictionary.

What rights are established by Assignment without the necessity of intimation.

No 31. 1587. *February.* DISHINGTON *against* L. LOCHNORIS.
 AN assignation of a reversion, without intimation annailzies not.

*Fol. Dic. v. 1. p. 63. Colvill, MS.**

No 32. 1589. *December.* DISHINGTON *against* PORTEOUS.
 IN double assignations made of the same reversion, he was preferred who first used the order of redemption.

*Fol. Dic. v. 1. p. 63. Colvill, MS.**

No 33. 1639. *March 6.* URQUHART *against* BARCLAY.
 By a contract betwixt umquhile John Urquhart, tutor of Cromarty, and umquhile Barclay of Towie, the Laird of Towie, having wadset to the said John Urquhart, certain lands, bearing a clause, ' That, notwithstanding of the wadset, the debtor should be obliged to pay the sum upon the requisition of 60 days ;' to the which contract, the umquhile tutor makes John Urquhart, son to the Laird of Cromarty, assignee, who, according to the contract, after the decease of the tutor cedent, and also after the death of the umquhile Laird of Towie, the debtor requires the son and heir of the said debtor, he being at that time served and returned heir, upon the said contract, to make payment, conform to the contract ;

Assignment of a contract of wadset was found to establish the right in the assignee's person, so as to entitle him to use requisition after the cedent's death, without any intermediate step of diligence.

* The Editor has already had occasion to observe, that the copy of the MS. decisions of Colvill, Lord Culrofs, in the Advocates Library, contains none of later date than 1584. He has not, therefore, yet discovered where Lord Kames found those he mentions posterior to that period.

which requisition is made to the said son and heir, he being then minor, and to his tutors and curators generally; which contract is thereafter registrate by the assignee, and charges raised thereupon, and suspended: In which suspension, it being questioned, that the requisition could not be sustained, being made by the assignee to the heir of the debtor, after the decease both of the creditor and debtor, and the contract then not being registrate, which not being decerned, nor sentenced, at the cedent's instance; the cedent could not, in law, make any requisition which could be effectual, before he had recovered decreet. And also, he *alleged*, that by no private warrant could this party have power to make requisition to the defenders tutors and curators; but he ought to have purchased letters of the LORDS, giving warrant to require the minors, tutors, and curators, which not being done, the requisition cannot be sustained. These *allegances* were both repelled; and the LORDS found no necessity, that the contract should be registrate at the assignee's instance, before he could require, seeing it was registrate at his instance against the suspender, as heir to his father *passive*, after that requisition, and so, which the LORDS found, might be drawn back to the requisition; and also, they found, that there was no necessity to have the LORDS letters, in supplement, to warn tutors and curators; but sustained the order; and yet it is usual, in such cases, to obtain letters to warn the tutors and curators of minors; albeit it was found not necessary, or if it should be omitted, that the omission should annul the requisition. See REDEMPTION. See CITATION.

A. & Nicolson.

Alt. Baird.

Fol. Dic. v. 1. p. 63. Durie, p. 878.

1673. July 27. MONTGOMERY against MONTGOMERY.

NEIL MONTGOMERY having apprised his father's tack of the teinds of Kirkmichael, pursued reduction of the sub-tacks granted to the heritors, which being granted during the not payment of a sum, and so having no determinate ish, were found null against the appriiser, as is observed upon the 8th day of July instant.*—Bridge-end, one of the heritors, further *alleged*, That in his sub-tack there is this clause, 'That for the sub-tacksman's further security, the principal tacksmen assigns him to all right he hath to the said teinds in so far as may concern his lands,' which being an assignation, requires no ish, and may be perpetuate, and is a habile way of transmitting tacks.—It was *answered*, That this clause could only be understood for further security of the tack, which being null, it could not support it. *2do*, There is no mention in it of the principal tack. *3tio*, The sub-tack was in March, and the apprising was in May; so that the sub-tack could not attain possession before the fetter was denuded by the apprising.—It was *replied*, That being fet to the heritor himself, it could not be intimated to himself, but his possession both of land and teind was sufficient.

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* Stair. v. 2. p. 206. Montgomery against Parishioners of Kirkmichael, *vide* TACK.

No 33.

No 34.

A tack of teinds being assigned to the heritor himself, the assignation was found effectual in a competition from its date, requiring no intimation.