

No 21.

1610. January 19. ROSS against STEWART.

HE whose land is comprised by an assignee to certain bonds, may improve the said assignation, because it is lawful to a man to improve any writ that is used against him, or whereby he is prejudged.

*Fol. Dic. v. 1. p. 517. Haddington, MS. No 1749.*

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No 22.

In a pursuit upon a bond for a considerable sum, at the instance of an assignee, it was found competent for the debtor to allege, that the assignation was null, being subscribed by only one notary.

1610. January 25. WARDLAW against EARL MARSHALL.

GEORGE WARDLAW, assignee constitute by umquhile Mr John Wardlaw, his brother, to an obligation of eighteen hundred merks, made to the said Mr John by the Earl Marshall, charged the said Earl to pay the said sum, who sustained, alleging the assignation was null, as it contained eighteen hundred merks, and neither being subscribed by the party who could write, nor by two notaries. It was *answered*, That the exception was not competent to the pursuer, because he had interest to quarrel the assignation, seeing the heir quarrelled it. It was *answered*, That he had undoubted interest to exclude the pursuer if he wanted a sufficient title. Next, it was *answered* by the assignee, That his brother being upon his death-bed, and so sick that he could not write, he had caused a notary subscribe for him; and, as a notary may subscribe a testament of the hail goods of a sick man, so may he make an assignation of a part, which must avail *tanquam legatum*. It was *answered*, That a notary might make a testament, because the act of Parliament permitted that; but there was no sick warrant for the making an assignation of consequence by a notary. In respect whereof, the LORDS found the said assignation null of the law.

*Fol. Dic. v. 1. p. 517. Haddington, MS. No 1760.*

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1612. June 23.

EARL OF MARR, and THOMAS EWING against LAIRD of LEE.

No 23.

HE wha is persewed be ane donatar to the escheit of ane tacksman of teinds, for spuilziation of ane part of the said teinds, *et lite pendente* intending reduction of the hornings, whairupon the rebel's escheat was tane, will not be found to have any interest, unless he qualify, either that he had right from the rebel, or right from the King upon other hornings.

*Fol. Dic. v. 1. p. 517. Haddington, MS. No 2465.*