

1611. *January 22.* A. *against B.*

A BURGESS of Edinburgh may take an assignation to a debt owing to another burghess, and thereupon arrest his debtor, and cause ward him while he find caution to answer as law will.

If the janitor suffer a man to escape who was warded for debt, he will become debtor to the party at whose instance he was warded; but the debt must first be tried against the principal party, unless his warding proceed upon a decret; and if he who escaped die before payment, or his re-entry, the janitor will be debtor.

A stranger, who is addebted to a Scotsman, coming to this country, may be charged by an officer, at command of a Bailie, to enter in ward, while he find caution to answer as law will.

Fol. Dic. v. 2. p. 78. Haddington, MS. v. 2. No 2107.

No 41.
A burghess of Edinburgh may take assignation to a debt owing to another burghess, and thereupon arrest the debtor, and cause ward him till he find caution.

1611. *July 20.* COCHRAN *against* GOURLAY.

A REVERSION being granted to a man and his heirs, his assignees can have no right thereto, although the reversion bear, that the giver receiving his money shall renounce in favour of the receiver, and his heirs and assignees.

Fol. Dic. v. 2. p. 75. Haddington, MS. v. 2. No 2274.

No 42.

1613. *July 28.* HAY *against* BANDONE.

SIR GEORGE HAY, assignee constituted by Peter Hay of Kirkland, to one Murray, made against Bandone, to remove from Courthill, pursuing removing, it was *alleged*, That he wanted a title and ground right, and that the warning could be no right to pursue without a real title. The pursuer *replied*, That the cedent of the warning and assignation having comprised the lands from Peter Hay, he had made judicial assignations of his comprising to the pursuer; which reply was found relevant, and process granted thereupon.

Fol. Dic. v. 2. p. 78. Haddington, MS. v. 2. No 2549.

No 43.

1622. *November.* EDMONDSTONE *against* KIRKCALDY.

EDMONDSTONE raised a double pouding against Christian Kirkcaldy, on the one part, and Alexander Barclay on the other, as double charged for the sum of 200 merks, which he was obliged to pay to the said Christian, for aliment of her and her bairns, for the terms of Lammas and Halloweven last by past. Alexander Barclay *alleged*, That he having arrested the sum by virtue of a bond of L. 400 made to him by Walter Adamson, spouse to Christian Kirk-

No 44.
A bond for aliment to a wife, granted by a third party, does not fall under the husband's *jus mariti*, she not being

No 44.
 otherways
 alimented by
 him.
 See No 54.
 p. 10372.
 See No 50.
 p. 10368.

caldy, who was *dominus bonorum* belonging to her, he behoved to be answered and obeyed. She *alleged*, That she should be preferred, because the bond was given for aliment of her and her bairns, and of her husband remaining with them within this country, and that he being absent the terms controverted, and some years before, the whole sum belonged to her and her bairns for their aliment.—THE LORDS considering the meanness of the sum, the quality of the woman, and number of her seven bairns, found the sum mean enough for their aliment, and that no part of it could be subject to her husband's debt. The bond was of 400 merks yearly, to be paid at four terms, and was given by Smeiton, and Sir Robert Hepburn his brother, to James Aikenhead, to the behoof of the woman and her bairns, for their aliment, and was now in the person of Charles Edmondstone to their behoof for their aliment.

Fol. Dic. v. 2. p. 76. Haddington, MS. No 2681.

No 45.

A tack was let to a man and his wife during their lives, and to their heir after them. Their apparent heir, after their decease, assigned the tack. Found, that the tack was personal to the liferenters and their heir, and not assignable.

1623. February 14. RATTRAY against GRAHAM.

In a reduction of a decret of removing obtained by Mr James Graham, which was pursued by one Rattray, upon this reason, viz. that the Lo. Gray, who was author to Mr James Graham in the right, whereupon he had obtained the sentence of that removing long before the right made to Mr James, had set a tack and assedation of these lands controverted to one ———, and his spouse, during their lifetimes, and to their heir after their decease; and that the eldest son of these liferenters, and apparent heir, had made the pursuer of that reduction assignee to his right of that tack, who being on life, as he and his assignee might have defended against the removing, if they had compeared, so now he, as assignee constituted to the tack by the apparent heir yet on life, might reduce it.—THE LORDS assoilzied from this reason of reduction for these two causes, which were both found relevant, viz. because the assignation was made by the apparent heir, who, albeit he might bruik *hoc nomine* as apparent heir, yet he could not transmit nor assign the tack and right thereof, except he had been served heir, the tack being set to the heir, otherways the assignee might bruik during the lifetime of the apparent heir his author, and yet, after his author's decease, another might come and serve himself heir to the first persons, who were the first liferenters in the tack, and bruik during that heir's lifetime, and so the tack should be extended to a liferent longer than it was granted, and than the tenor thereof proports, which cannot be, seeing the apparent heir's assignee should bruik during the apparent heir's lifetime, and he who truly entered heir should bruik during his lifetime also, whereas the tack is only set for the lifetime of one heir; *2do*, THE LORDS assoilzied from that reason, because the tack was set personally to the liferenters therein named, and to their heir, without making mention of the assignees, and so the tack