

1623. March 21. L. CRAIGIE WALLACE against His TENANTS.

IN an action of removing, pursued by the L. Craigie Wallace, against his tenants, an exception being proponed by one of the defenders, founded upon his rental, set to him by the pursuer's father, during the excipient's lifetime; whereto it being *replied* for the pursuer, That that rental could not furnish any ground of defence, because, the defender had assigned and disposed his rental to another, which disposition made the right of the rental to become extinct, as well to the rentaller himself, as to him to whom the same was assigned and disposed: *Duplied* for the defender, That the rental was not personally set to the defender, but thereby also; by a special clause thereof, he had power to output and input tenants and subtenants in the lands under him; in respect of the which clause, he had power to dispoise upon his rental to another, being of the like degree with himself, seeing that clause behoved to import the same, so that, by the disposition, the rental could not fall. THE LORDS found, that, notwithstanding of the clause, bearing power to input and output tenants and subtenants, under the rentaller, yet that he had no power, by that clause, to assign or dispoise the rental; and found the disposition of a rental *in toto*, or of the most part of the land contained in a rental, made the whole rental to fall *in toto*; but, if the disposition was made of a less part than the half of the lands contained in that rental, such dispositions should not make the whole rental to fall, but only *pro tanto*, *viz.* for the part disposed, and that the rental should stand, and subsist for the rest of the lands, which were not disposed, where the disposition was not made of all, or the most part of the lands therein contained.

Act. Hope & Lawrie. Ak. Nicolson & Miller. Clerk, Gibson.

Fol. Dic. v. 1. p. 484. Durie, p. 60.

* * See Kerse and Haddington's reports of this case, No 34. p. 6432, *voce*
IMPLIED DISCHARGE AND RENUNCIATION.

1625. July 5.

L. AITON against TENANTS.

IN a removing pursued by the L. of Aiton, who had bought some lands from L. Wedderburn, against the tenants of the lands, for removing therefrom; the LORDS found, that albeit the defenders, who had rentals of their lands, had put other tenants in possession of the lands, wherein they were personally rentalled themselves, yet by the putting of others in possession thereof, they had not tint nor annulled their rentals, except that they had expressly disposed the right of their rental; and that the putting of others in the real possession of the land, was not a sufficient cause, to debar them from the

No 23.

A rental found null *in toto*, the rentaller having assigned more than half of the lands, without the master's consent; but, if less than the half had been assigned, the irritancy would only have taken effect as to the part assigned.

A clause, allowing a rentaller to input and output tenants, does not entitle him to assign.

No 24.

The inputting of a subtenant has not the effect of a forfeiture where there is no subtack or other written deed.