

1622. July 30. MONNYPENNY against BLACK of Largo.

FOUND that the cedent could not swear in prejudice of the assignee, albeit the charge was raised by the cedent, and that the assignee only compeared in the suspension for his interest.

Kerse, MS. fol. 54.

No 9.

1622. December 19. SCHAW against ———

THE LORDS found that the assignee could be in no better case than the cedent, albeit it was answered that the cedent could only be excluded by a personal exception, that she was heir to her father who had renounced.

Kerse, MS. fol. 54.

No 10.

1623. November 19. Mr JOHN ROSS against The LAIRD of BALMIRRI NOCH.

THE LORDS found that the taking of assignation from a third party, did not prejudice the assignee of his own right quihilk he had otherways.

Kerse, MS. fol. 54.

No 11.

1625. February 2. A. against B.

ASSIGNATION with intimation (*nominis*) or the possession of a right, cessible by simple assignation, as if a liferent sustained against a posterior comprising, or arretment; notwithstanding of this reply, that it was offered to be proven, that the cedent remained in possession.

Kerse, MS. fol. 54.

No 12.

1626. July 27. L. ANSTRUTHER against BLACK.

IN an action betwixt the L. of Anstruther, as assignee constitute by Sir Thomas Dischington, to some monies addebted to him by Mr Black, out of the lands of Largo, the LORDS found, That an assignation made to sums of money, for the which Sir Thomas, the cedent, had charter and safine, the time of the assignation, could not be so valially assigned; but that notwithstanding of the assignation and intimation thereof, another of the cedent's creditors might thereafter comprife the same from the debtor; and which comprifer would be preferred in his right to the prior assignee, seeing the assignation was not *habilis modus* to

No 13.
A perion, assignig a sum, for which he has heritable security, is not thereby denuded. The right may be, notwithstanding, adjudged.

- No 13. denude the cedent of his real right, whereof he had then charter and sasine; but whereupon, at the time of the assignation, the cedent was not infeft, though thereafter he acquired charter and sasine, but then another comprises; yet the assignee will be preferred to the compriser, notwithstanding of the said subsequent charter after the assignation, and before the comprising.

Aët. Hope & Lermonth

Alt. Lawrie & Oliphant.

Clerk, Hay.

Durie, p. 230.

- No 14. 1628. November 14. CUMING against CUMING.

FOUND that an assignee cannot be paid of a part of the sums obliged for lands, till a bond given apart by the cedent, for ratifying of the alienation at his perfect age, be fulfilled.

Kerse, MS. fol. 54.

- No 15. 1629. July 13. HAMILTON against HAMILTON.

AN assignee to a contract, or bond, if he charge the other party to fulfil to him as assignee, his part of the said contract, the defender may allege that the cedent must fulfil his part first, or at least *per simul & semel*; whilk the LORDS allow, for that contract whereunto the charger is made assignee; but if the cedent be obliged to the defender by another contract or bond, the assignee is not holden to answer to the same.

Balmanno, MS. (ASSIGNATION.) p. 14.

- No 16.
The extent of
warrantice of
an assigna-
tion.

1632. February 4. ALEXANDER MACKLONAQUHEN against GILES CARSAN.

Queritur. How far one is obliged to warrant the assignation of a bond, &c. made by himself to another; whether that it is truly owing by the debtor simply, or that it is both owing, and that the debtor is responfal. This was drawn in question betwixt these parties, but they agreed between themselves. The law is clear, l. 4. et 5. ff. de Hered. et Act. Vend. Quod nomine debitoris venditio, venditor præstare non debet idoneum, et locupletem esse debitorem, nisi ita actum sit nominatum, sed esse debitorem tantum, et nulla tutum exceptione peremptoria et perpetua; nam emptori nominis de periculo in substantia non in qualitate venditor tenetur.

Spottiswood, (ASSIGNATION.) p. 21