

* * * Spottiswood reports this case :

No 51.

1630. *February*.—THOMAS MYLES being infest in two tenements in Dundee by John Coustoun, under reversion, upon payment of 10 shillings, by John, in his own lifetime allenary; within two or three months after the disposition, John useth an order of redemption, and intenteth summons of declarator. To which order, and all that followed thereupon, he assigned Robert Murray, one of his creditors, who sought the same to be transferred in his person. *Alleged* by Thomas, The reversion being personal to John alone, who was deceased before declarator of redemption, the order used by him expired by his decease.—THE LORDS found, that John having used an order in his own time, whereby he declared his mind to redeem, he might lawfully assign the same, and his assignee had good interest to seek a declarator upon the said order, as the cedent might have done in his time.

Spottiswood, (REDEMPTION.) p. 265.

1631. *June 13.*

CAMPBELL, Prior of Ardchattan *against* The Captain of CLAN-RONALD.

No 52.

A charge to enter heir may be insisted in at the instance of an assignee. It does not expire at the death of the cedent.

THERE being a decret-arbitral betwixt the umquhile Prior of Ardchattan, and the umquhile Captain of Clan-Ronald, pronounced by the Judges therein, and the umquhile Prior in his lifetime having charged the eldest son of the umquhile Captain, who was the other party, to enter heir to him; after which charge, the Prior, at whose instance the said charge was executed, having made his son now pursuer, assignee to the said decret-arbitral, and to the charge given by him to the son of the other party, to enter heir, as said is; the said pursuer, as assignee, pursues the said son, as lawfully charged to enter heir, to make payment to him of the sums contained in the said decret. And the defender *alleging*, That that charge to enter heir given to him at the instance of the pursuer's father, who is now deceased, cannot be a ground to sustain this process against the defender, at the said pursuer's instance; for the said charge must expire, and become extinct, by the decease of him at whose instance it was given; for it is a personal charge, whereupon nothing followed in the lifetime of him at whose instance it was given, and after his decease cannot be prosecuted by his assignee; but the pursuer, if he would seek any process against him, as representing his father, he ought to charge him *de novo* at his own instance;—this allegation was repelled, and the LORDS found, that the assignee might insist upon that charge given by the cedent, after the cedent's decease; as an assignee to a summons and action intended by the cedent, may prosecute the same after the cedent's decease. This hath its own scruple, for the assignee cannot always prosecute the act begun by the cedent, after the

cedent's decease, as if the cedent had raised letters of horning against his debtor, and after the charge had died, his assignee ought not to have denounced the debtor upon that charge; neither can an assignee to a decret, execute or do any deed upon that decret after his cedent's death, while the same be transferred in the assignee, except the assignation had been lawfully intimated in the cedent's lifetime, as was done 23d January 1624, Stevenson. No 24. p. 836.

Act. *Mowat.*Act. *Gibson.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 78. Durie, p. 591.*

* * * Spottiswood reports this case :

THERE was a decret-arbitral pronounced betwixt the Prior of Ardchattan and the Captain of Clan-Ronald, whereby the Captain was decerned to pay a certain yearly duty to the Prior for his teinds. The Captain deceasing, the Prior charged his son to enter heir to him, to the end he might fulfil the said decret, and after assigns his son John Campbell to the said decret-arbitral, together with the charge foresaid, and all that had followed on the same. Upon which assignation, after the Prior's decease, John pursued the Captain as son and heir, at least as lawfully charged to enter heir to his father, to make payment of the sums decerned in the decret. *Alleged*, No process against the defender as lawfully charged to enter heir, because the charge was used at the pursuer's father's instance, whereunto the pursuer could not be made assignee; but the cedent being dead, the charge must expire, and the pursuer must use one at his own instance. *Answered*, The charge being a part of the process, the pursuer must be assigned to it, as well as to a summons, or to any other letters, &c.—THE LORDS sustained the process at the assignee's instance.

Spottiswood, (HEIRS.) p. 142.

1637. February 28.

HUME against CRAW.

ONE Craw having set a tack of his lands of ——— to another Craw, during his lifetime, not bearing, to be set to his heirs and assignees, nor yet bearing any clause excluding assignees; which tack being assigned by the tacksman to one Hume, who pursuing the setter of the tack, and another called ——— Craw, (who had acquired after the tack, and after inhibition served thereon, an heritable right of the lands from Craw, setter of the tack, and by virtue whereof they retained among them the possession of the lands), for payment of the mails and duties of the lands, as was provided by the tack, if the tacksman was not entered thereto; and it being *alleged*, That this tack was personally set to the tacksman, and so could not be transmitted in an assignee, there being no power in the tack to make assignees, the LORDS repelled this alleg-

Vol. XXV.

57 R

No 52.

No 53.

Liferent
tacks are
assignable,
tho' assignees
be not ex-
pressed.