

the compriser to the superior, the Lords found, in the like cases in all time coming, should be repaid again to the payer, if his right shall be rejected, and another preferred to him, he who shall be preferred, and by whom he shall be excluded, shall reimburse him. No. 35.

Act. Hay.

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 409. Durie, p. 392.

1629. *March 12.* COLMSLIE *against* EARL ROXBURGH.

No. 36.

A superior was found obliged to receive a compriser's assignee as well as himself.

Fol. Dic. v. 2. p. 408. Durie.

* * * This case is No. 18. p. 200. *voce* ADJUDICATION.

1634. *July 22.* HAY *against* BAILIES of ABERDEEN.

Hay of Crimonmogat having charged the Bailies of Aberdeen, upon a procuratory of resignation made of some tenements of land in Aberdeen, holding burgage in his favours, to infest him therein; and they suspending, that they were not holden to receive the resignation, being done in favours of one who is not burges of their burgh; and if, in law, they could be obliged to infest him, as they alleged they were not, (any more than other superiors can be compelled to receive and change their vassals, upon a prior vassal's resignation, or disposition, which no superior is bound, in law, to acknowledge), yet, if they might be compelled in law, they ought to have a year's duty, as the land paid, and be otherwise satisfied in a composition, for receiving and infesting him; the Lords found not this reason relevant; but found, that the Magistrates ought to receive and infest this person, albeit he was not a burges, upon the foresaid procuratory of resignation made in his favours, and that without payment of a year's rent of the land, or any other composition therefore, albeit other superiors of other lands, not burgage, are not compelled to receive such resignations, and to change their vassals, against their will; for they ought to claim no satisfaction therefore, seeing the land is not holden of them as superiors, but in burgage of the King; and the Magistrates are but the King's Bailies, and so should have nothing done therefore, but the services of the burgh; yet the scruple abides, viz. That lands of burghs, granted in burgage holding, ought not to be transmitted to any other, not being burgesses; for it appears to change the tenor of the concession given to the incorporation of the burgh by the Prince, which none can bruik, not being burgesses, and of that Corporation; and which the Magistrate, although he be not superior,

No. 37.

The Magistrates of a Burgh Royal were found obliged to give infestment to a singular successor upon the prior vassal's resignation.

No. 37. but the King's Bailie, cannot, nor ought not to alter; but the receiving of one not burgess changes not the holding.

Act. Mawat.

Fol. Dic. v. 2. p. 408. Durie, p. 730.

1663. February 5. CARNEGIE against CRANBURN.

No. 38.

There being an original grant of ward-lands from the King, bearing, *heredibus et assignatis quibuscunque*, this clause was found only to entitle the vassal to assign his right before infeftment; but, after infeftment, the vassal disposing his lands, it was found, that it did not save him from recognition.

Fol. Dic. v. 2. p. 408. Stair.

* * This case is No. 58. p. 10375. voce PERSONAL AND TRANSMISSIBLE.

A similar decision was pronounced, 29th January, 1673, Ogilvie against Kinloch, No. 65. p. 10384. IBIDEM.

1684. February. AITCHISON against DICKSON.

No. 39.

The Earl of Roxburgh having granted a feu-infeftment to Adam Niven of a house in Kelso, and having disposed the same to John Dickson, who was infeft, to be holden base of the granter, and John Dickson having entered into a minute with James Aitchison, by which he was obliged to dispoise the house, and to grant him a sufficient disposition, containing a procuratory of resignation and precept of sasine; and John Dickson being charged for granting of the disposition; he suspended, upon consignment of a disposition, bearing an obligation to infeft, and procuratory of resignation. Answered, That the suspender being infeft holding base of Niven, his author, the disposition was not sufficient, unless he should procure the base infeftment to be confirmed by the Earl of Roxburgh, superior. The Lords found the disposition sufficient, and that the clause of the bond obliging the suspender to grant a sufficient disposition, did not import that he should obtain himself infeft to be holden of the superior, or procure a confirmation of Niven's base infeftment.

Sir P. Home MS. v. 1. No. 563.

1685. February 24.

JAMES CLELAND, Merchant in Edinburgh, against MR. JOHN DEMPSTER of Pitlever.

No. 40.

The Lords prefer Cleland, in respect the first citation is at his instance before the Lords, albeit Pitlever's decret before the Sheriff of Fife be prior to Cleland's.