

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.