

cause, to one not creditor prior to the assignation; and so it was found at the instance of a substitute in the assignation to bar a conveyance in the assignee's contract of marriage.

No 83.

*Kilkerran*, (PERSONAL and TRANSMISSIBLE.) No 1. p. 396.

1746. July 23. EARL OF ROSEBERRY *against* GEDDES of Scotstoun, &c.

No 84.

THE Earl of Roseberry's estate being sequestrated by the LORDS at the suit of his creditors, and L. 100 Sterling yearly allowed to himself in name of aliment; upon a complaint by the Earl against certain of his creditors for having poinded his horse, which he affirmed to have been purchased by him with the money allowed for his aliment, the LORDS found, "That the horse being by the execution of poinding estimated at L. 9 Sterling, was not poindable, and ordained the poinder to restore."

The day before, the LORDS had found another horse of his poindable, because being of L. 50 Sterling value, such horse could not be presumed purchased by his aliment; but a horse of so low a value as L. 9 was what reasonably might be purchased out of the aliment for his use, and so was as little poindable as the aliment itself was arrestable.

*Kilkerran*, (ALIMENT and EDUCATION.) No 3. p. 22.

1748. January 7. ATCHISON *against* BENNY.

No 85.

ON the verbal report of Lord Elchies for advice, it was found, That the rule in our law books, that tacks not bearing to assignees cannot be assigned without consent of the heritor, does not extend to urban tenements; and that therefore a tack for 13 years of a house in Falkirk might be assigned or subset without consent of the proprietor. But in this the LORDS were not unanimous, as several were of opinion, that there is often no less an *electio persona* in the tack of a house than of land.

*Kilkerran*, (TACK.) No 5. p. 533.

\* \* D. Falconer reports this case :

A PERSON in Falkirk set a house for thirteen years to one Russel, who removing from the place, let it to Atchison; but the original landlord having sold the house to Benny, he hindered Atchison from taking possession, on this ground, that tacks were not assignable.

*Disputed*, Whether the rule extended to urban tenements.

No 83.

On report of Lord Elchies, the LORDS advised him to find the tack assignable.

*Fol. Dic. v. 4. p. 76. D. Falconer, v. 1. No 226. p. 310.*

1748. June 28.

NEILL *against* ANDREWS.

No 84.

A power to a seller to redeem within a limited time, without mentioning assignees, is not assignable.

WILLIAM NEILL in Prestick disposed a small piece of ground to Thomas Andrews, smith in Monkton, who, of the same date, by a letter addressed to him, not holograph, promised "that the seller should be welcome to redeem from him, upon payment of the prime cost, interest, and charges laid out by the disponee to him and others, within seven years after the date."

William Neill made an offer of redemption, and insisted in a declarator before the Sheriff, during which he received some part of the price which had not been paid; and this the Sheriff found to be a passing from the redemption.

He afterwards disposed his right to James his brother, and died; and James insisted in a declarator of redemption before the LORDS of Session, to which it was *objected*, That a right of reversion could not be constituted by a missive letter not holograph, though the subscription should afterwards be acknowledged; but on this no determination was given.

*2dly*, Reversions were *stricti juris*, and did not extend to assignees when not expressed; Stair, Book 2. Tit. 10. § 7. and Book 3. Tit. 1. § 16.

*Answered*, A minute of agreement receives an ampler construction than a formal executed deed, being interpreted *secundum quod plerumque fit*; and if this is so in minutes, much more ought it to hold in interpreting a missive.

THE LORDS found the faculty of redemption did not belong to an assignee.

Reporter, *Kilkerran*.Act. *Boswell*.Alt. *Lockhart*.

*Fol. Dic. v. 4. p. 76. D. Falconer, No 266. p. 358.*

\*\*\* Kilkerran reports this case:

WILLIAM NEILL, proprietor of a small bit of ground in the parish of Monkton, disposed the same to Thomas Andrew in 1738. The disposition did not express the particular price paid, but it was admitted to have been 22 years purchase.

Of the date of the disposition, there is a missive letter from Andrew to William Neill, bearing, that he should be welcome to redeem the land upon payment of the prime cost and charges at any time within seven years.

This letter of reversion William Neill assigned to his brother James in 1744, who before he should provide money to consign upon an order of redemption,