

1776. July 23.

NEVE CALDERS against M'KENZIES.

No 37.

A PROCESS of oppression and damages was found transferable against the heir of the original defender, in respect that litis-contestation was made with the defunct by an extracted act and commission for taking a proof. See APPENDIX.

*Fol. Dic. v. 4. p. 74.*

1798. March 6.

GRAHAM against E. of HOPETOUN.

No 38.

THE penalties imposed on a tutor by the act, 1672, c. 2, for not making up tutorial inventories, cannot be claimed from his heir, even in the shape of an objection to his ancestor's accounts.

\* \* \* See the particulars, No 143. p. 5599, *voce* HERITABLE and MOVEABLE.

## S E C T. III.

## What Rights go to Assignees.

1578. December 3.

BORTHWICK against ARCHBISHOP of ST ANDREWS.

No 39.

THERE was one A. B. being put to the horn, his escheat came in the Bishop of St Andrew's hands, as Lord of the regality. Amongst the rest of the gear that came under escheat, there was a tack set to him by the Lord Borthwick, which bore into it, that he, whom to the tack was set, should make no assignees to the said tack of higher degree nor himself. Thereafter the Bishop disposed the said tack to one Cairncross. It was *objected* against the Bishop's gift, that it was of no strength, force, nor effect, because it was contrary and against the tenor of the tack, which bore clause of no higher degree, and it was of truth, that the person to whom the Bishop had disposed the same was higher degree, et sic contra naturam contractus fuit dispositio illa facta per Episcopum. To this was *answered*, Quod Episcopus in hoc casu utebatur jure fiscali, et licitum esse fiscali domino res suas disponere quando et cui voluerit, sine ulla personarum exceptione.

THE LORDS found the disposition of the tack foresaid given by the Bishop, notwithstanding of the clause contained in the said tack, of the assignees of higher degree, sufficient.

A tack was let with a clause, that it should not be assigned to any one of higher degree than the tacksman. The tack having fallen under the tacksman's escheat, it was found, that the Lord of regality, to whom the escheat had fallen, might assign the tack to a person of whatsoever degree.

*Fol. Dic. v. 2. p. 76. Colvil, MS. p. 267.*