which requiſition is made to the ſaid ſon and heir, he being then minor, and to his tutors and curators generally; which contract is thereafter regiſtrate by the aſſignee, and charges raiſed thereupon, and ſuſpended: In which ſuſpenſion, it being queſtioned, that the requiſition could not be ſuſtained, being made by the aſſignee to the heir of the debtor, after the deceaſe both of the creditor and debtor, and the contract then not being regiſtrate, which not being decerned, nor ſentenced, at the cedent's inſtance; the cedent could not, in law, make any requiſition which could be effectual, before he had recovered decreet. And alſo, he *alleged*, that by no private warrant could this party have power to make requiſition to the defenders tutors and curators; but he ought to have purchaſed letters of the LORDS, giving warrant to require the minors, tutors, and curators, which not being done, the requiſition cannot be ſuſtained. Theſe *allegeances* were both repelled; and the LORDS found no neceſſity, that the contract ſhould be regiſtrate at the aſſignee's inſtance, before he could require, ſeeing it was regiſtrate at his inſtance againſt the ſuſpender, as heir to his father *passive*, after that requiſition, and ſo, which the LORDS found, might be drawn back to the requiſition; and alſo, they found, that there was no neceſſity to have the LORDS letters, in ſupplement, to warn tutors and curators; but ſuſtained the order; and yet it is uſual, in ſuch caſes, to obtain letters to warn the tutors and curators of minors; albeit it was found not neceſſary, or if it ſhould be omitted, that the omiſſion ſhould annul the requiſition. *See* REDEMPTION. *See* CITATION. No 33.

Act. *Nicolson.* Alt. *Baird.*

Fol. Dic. v. 1. *p.* 63. *Durie, p.* 878.

1673. *July* 27. MONTGOMERY *against* MONTGOMERY.

NEIL MONTGOMERY having appriſed his father's tack of the teinds of Kirkmichael, purſued reduction of the ſub-tacks granted to the heritors, which being granted during the not payment of a ſum, and ſo having no determinate iſh, were found null againſt the appriſer, as is obſerved upon the 8th day of July inſtant.*—Bridge-end, one of the heritors, further *alleged*, That in his ſub-tack there is this clauſe, 'That for the ſub-tackſman's further ſecurity, the principal 'tackſman aſſigns him to all right he hath to the ſaid teinds in ſo far as may 'concern his lands,' which being an aſſignation, requires no iſh, and may be perpetuate, and is a habile way of tranſmitting tacks.—It was *answered*, That this clauſe could only be underſtood for further ſecurity of the tack, which being null, it could not ſupport it. 2*do*, There is no mention in it of the principal tack. 3*tio*, The ſub-tack was in March, and the appriſing was in May; ſo that the ſub-tack could not attain poſſeſſion before the ſetter was denuded by the appriſing.—It was *replied*, That being ſet to the heritor himſelf, it could not be intimated to himſelf, but his poſſeſſion both of land and teind was ſufficient. No 34. A tack of teinds being aſſigned to the heritor himſelf, the aſſignation was found effectual in a competition from its date, requiring no intimation.

* Stair, v. 2. p. 206. Montgomery againſt Pariſhioners of Kirkmichael, *vide* TACK.

No 34.

THE LORDS ſuſtained the clauſe, as being an aſſignation to the heritor himſelf, which needed no further intimation or poſſeſſion.

In this proceſs it was alſo found, That the annuity is a burden, being upon the principal tackſman, and no part thereof upon the ſub-tackſman, unleſs they were obliged by the tenor of the tacks; and the annuity did not divide upon the tackſmen and ſub-tackſmen according to their benefit. (*See* TEINDS.)

Fol. Dic. v. 1. *p.* 63. *Stair, v.* 2. *p.* 223.

1676. *December* 14. EARL of ARGYLE *againſt* LORD M'DONALD.

No 35.
A diſpoſition of the ſuperiority to the vaſſal himſelf, implies an aſſignation, and needs no intimation.

THE Earl of Argyle having purchaſed the ſuperiority of Knodyeer from Lochnell, he purſues a reduction of M'Donald's right, who holds the ſame of Lochnell, and now of Argyle; and M'Donald having *alleged*, that Argyle was obliged to relieve Lochnell of the diſpoſition of that ſuperiority, that he had formerly made to M'Donald; the allegeance was found relevant; and M'Donald's oath of calumny being craved thereupon, he failed to compear, and thereupon decreet of reduction was pronounced and extracted. M'Donald does now purſue reduction of that decreet, and offers to give his oath of calumny, and thereupon craves to be reponed to his defence, and ſo have a term aſſigned, and an incident for obtaining the writ out of Lochnell's hand. The purſuer *anſwered*, That he was willing to repone the defender to his oath of calumny, and to his defence, if inſtantly verified: Otherwiſe he adhered to his decreet, which being *in foro* upon certification, it was as ſtrong as if a term had been aſſigned to prove, and M'Donald had ſuccumbed, though there were but neglect: But here was contumacy, that being preſent in town, he did not depone, and hath not any excuſe, the decreet being in the midſt of the Seſſion.

THE LORDS reponed M'Donald to his oath of calumny, but refuſed to give a new term to prove, or any diligence, the intimacy betwixt M'Donald and Lochnell being notour: But if M'Donald ſhould depone that he was not maſter of the bond at preſent;——THE LORDS ſuperſeded the extract till the firſt day of February, that if any ſuch bond were produced betwixt and then, it might be received.

M'Donald further *alleged*, That his feu could not be reduced for not payment of the feu-duty, becauſe he produces a right to the ſuperiority from Lochnell, the common author; which comprehending a diſpoſition of all right, is equivalent to a diſcharge, or to an aſſignation to the feu-duties, which being granted to the debtor himſelf, needs no intimation; ſo that albeit the purſuer being firſt inſeft, hath right to the ſuperiority; yet the defender's diſpoſition of the ſuperiority ſecures him as to the bygones before the purſuer's infeftment. It was *anſwered*, That the right of ſuperiority carrieth therewith, without any ſpecial right, all the caſualties of ſuperiority, though fallen before the right; and therefore neither feu-duties, nor other caſualties, fall to executors, but to the heir, unleſs they