

No 34.

THE LORDS sustained the clause, as being an assignation to the heir 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 tackman, and no part thereof upon the sub-tackman, unless they were obliged by the tenor of the tacks; and the annuity did not divide upon the tackmen and sub-tackmen 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 Knodyceer 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 allegiance was found relevant; and M'Donald's oath of calumny being craved thereupon, he failed to compare, and thereupon decret of reduction was pronounced and extracted. M'Donald does now pursue reduction of that decret, 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 reponer the defender to his oath of calumny, and to his defence, if instantly verified: Otherwise he adhered to his decret, 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 decret 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and Lochnell being notour: But if M'Donald should depone that he was not master of the bond at present;—THE LORDS superseded the extract till the first day of February, that if any such bond were produced betwixt and then, it might be received.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 infest, hath right to the superiority; yet the defender's disposition of the superiority secures him as to the bygones before the pursuer's infestment. 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

be separate actually by a decret, innovating their nature, and turning them into a liquid debt.

No 35.

THE LORDS found, That albeit the superiority carries the right of all casualties, which are not separate before the disposition of the superiority ; yet the same may be separate, not only by a decret, but by an assignation intimate ; and found the disposition of the superiority to the vassal himself to imply an assignation, which needed no intimation. (See IMPLIED ASSIGNATION.)

*Fol. Dic. v. 1. p. 63. Stair, v. 2. p. 478.*

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Intimation.

1492. June 22. MALCOLM DRUMMOND against MARGARET MUSCHET.

GIF ony creditour makes and constitutis ony persoun his cessioner and assignay to ony debt auctand to him, the said assignay aucht and fould make lauchful intimatioun of the said assignatioun to the debtour, utherwayis gif the said debtour happinis to pay the creditour, or ony utheris in his name, havand his richt and power before ony intimatioun maid to him, he onnawayis fould be compellit to mak ony payment to the said assignay be resoun of his assignation.

*Balfour, p. 169.*

No 36.  
If no intimation, the debtor is safe to pay to the cedent.

1540. January 25. A. against B.

GIF the creditour makis and constitutis ane assignay and cessioner, to ony debt auctand to him, and makis intimatioun of the said assignatioun to the debtour, the said assignay is sufficient in all time cuming to seclude him fra all actioun that he had, or may have, agains the said debtour, albeit he that is assignay mak na intimatioun of the said assignatioun to the debtour.

*Balfour, p. 170.*

No 37.  
The cedent is denuded, if he intimate himself, although the assignee do not intimate.

1558. July 4. DAVID M'GILL against JOHNE LAURESTOUN.

GIF ony man be maid assignay to ony actioun, assignatioun, or reversioun, and he agains quhome the said assignay is maid, befor ony intimatioun thair of lauchfullie maid unto him, compone, transact, or agrie with the maker thair of, touching the contentis of the said assignay, and obtene his discharge, richt, or titil thairanent, he may not be callit or perseuit be the said assignay, be vertue of his assignation ; but *jure preventiōis* is stoppit and secludit thairfra.

*Balfour, p. 169.*

No 38.  
The cedent may, before intimation, transact or discharge a right assigned.