

S E C T. III.

Legal Irritancy upon assigning or subsetting.—Rental Rights.—
Whether Marriage be such an Assignation as to infer Irritancy?

1569. July 8.

The KING'S ADVOCATE *against* JOHN WINTON & ALEXANDER BARCLAY.

No 19.
Feu reduced,
if the feue
dispone, con-
trary to the
tenor of his
infestment.

LANDIS set in feu to ony man and his airis, for payment of certane zeirliche few-maill, with expres provisioun contenit in the infestment, that it sall not be leasum to the fewar, his airis or assignayis, to annalzie the saidis landis in quhole or in part, without consent and licence of the settar of the few, his airis or successouris; gif thay mak alienatioun utherwayis, thay to tyne and forfault the few-ferme and heritabill richt of the saidis landis; gif the said fewar, or ony of his airis, cumis in the contrare of the said provisioun and restrictioun, the said settar, or his airis, hes just actioun and titill for reductioun and recognitoun of the said few.

Balfour, (FEUS.) No. 9. p. 172.

1610. February 23.

HAMILTON *against* BOYD.

No 20.

HE that has a rental of lands, and dispones the same in hail or in part, or makes subtacksmen thereof, amits so much of the rental as he assigns, or sets subtack of.

Fol. Dic. v. 1. p. 484. Haddington, MS. No. 1816.

. Kerse reports this case.

IN an action of removing, pursued at the instance of John Hamilton *against* Boyd, it was *alleged* for Boyd, That he could not be removed, because he had rental set to him during all the days of his lifetime. To the which it was *answered*, That he had tint his rental, in so far as he had made assignation thereof to a third person; at least he had set the tack of the said lands to subtenants. In respect of the which answer, the allegiance was repelled; and it was found, that the rental fell not only by the assignation, but also by the subtacks made of the said lands in hail, if there were tacks set of the hail; and in part, in so far as the same was set in tack.

This was decided of before, betwixt my Lord Douglas and Mr Patrick Walkinshaw, Minister.

No 20.

Kerse, MS. fol. 119.

1622. March 19.

EARL OF ROXBURGH *against* GRAY.

No 21.

IN an action betwixt the Earl of Roxburgh and Robert Gray, it was found, that the setting of tacks by a rentaller, whose rental contained a clause irritant, if he made any alienation or disposition of the rental, was a cause to annul the same; but that the setting a tack to the rentaller's eldest son, was not a cause to infringe the same.

Fol. Dic. v. 1. p. 484. Haddington, MS. No. 2618.

* * * Kerse reports this case.

THE LORDS found a rental, bearing this clause, that it should not be lawful to annulzie the same, null, because the rentaller had set tacks of the rented lands, for certain years, which were expired; and so found, that the words of "not alienation" did include locations.

Item, In the same cause, the LORDS found, that the assignation of the rental by the father to the eldest son, could not be a cause of forfeiture of the tack.

Kerse, MS. fol. 119.

* * * This case is also reported by Nicolson.

REDUCTION of a rental, set by Francis, Earl of Bothwell, to Robert Gray, of the mill of Midleen, and certain lands within the Abbey of Kelso.—*Ratio,* It is provided in the rental, that, if Gray make alienation or disposition, in hail or in part, to whatsoever person or persons, without consent of the immediate superior, first had and obtained, then the rental to be null. And true it is, Gray has set the tack libelled to the persons libelled; at the least, has disposed the hail land and mill to Robert Gray, his son, and possessed him therein, without the Earl's consent, now superior. *Alleged,* The clause irritant, and general prohibition of alienation, cannot be extended to the disposition made by Gray to his eldest son, being the person whom, by the law of God and man, he is obliged to entertain, bring up, and provide, and who is to be heir, no more than an alienation of ward lands to the eldest son could infer recognition; and true it is, that Robert, to whom the defender has disposed, is his eldest lawful son. Finds the allegiance relevant to elide the disposition;