

being thus conceived, not giving power to make assignation, he could not make an assignee to his tack, which was personally set; both which allegations were found relevant. See SERVICE and CONFIRMATION.

No 45.

Act. *Cunninghame.*Alt. *Aiton, Russel, et Graig.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 75. Durie, p. 46.*

\* \* Haddington reports this case :

IN an action betwixt Hay, relict of Dr Killoch, and Graham, now her spouse, against ———, the LORDS found, that a tack set by the Master of Gray to Dr Killoch and his wife, during their lifetimes, and after their decease to an heir, could not make the apparent heir able to set a tack, or defend a tenant pursued for the mails and duties of the lands, unless he were served heir; for otherways he might bruik as apparent heir, and, after his decease unentered, another, next of kin, serving himself heir to his father, might still bruik the tack.

*Haddington, MS. No 2762.*

1623. February 21. KER against TENANTS of NISBET.

ANE constitute assignee by Sir John Ker to a warning used in his name against the Tenants of Nisbet, pursued removing. The Tenants *alleged*, That an assignation to a warning was not a title to furnish an action, specially the cedent being denuded of the lands, which were comprised by Alexander Stewart. Alexander Stewart offered to concur with the pursuer, which the LORDS would not admit, because they thought, that albeit the comprising denuded Sir John Ker, yet it gave not right to the compriser to the warning.

*Fol. Dic. v. 2. p. 78. Haddington, MS. No 2772.*

No 46.

An assignation to a warning was not found a sufficient title in a removing.

1626. July 12. STEWART against E. of HOME.

ALTHOUGH a subject cannot unite lands, yet they being once united by the King, a subject may dispone them in the same manner as if he had the same granted to himself, although the disposition be not confirmed by his Majesty.

No 47.

*Fol. Dic. v. 2. p. 78.*

\* \* This case is No 8. p. 9060. *voce* MINOR NON TENETUR.