

S E C T. V.

Effect of Prestations in Mutual Contracts as relative to Assignees.

1627. July 17.

JOHN LOGAN *against* KILBRACKMAN.

JOHN LOGAN assignee constituted by Mr John Hamilton Commissary of Larnark, and his wife, to the sum of 400 merks owing to them by contract of marriage by Hamilton of Kilbrackman her father, charged Kilbrackman for the said sum; who suspended upon this reason, That it was conditioned to be given with Mr John for his daughter, that laying as much to it, the whole might be laid upon lands to them and their heirs gotten betwixt them; until which condition were fulfilled, he could not be obliged to make payment of the 400 merks. *Answered*, That being cessioner to them both, who were only interested, and for whose affairs he had lent so much, it behoved to be thought that it was as well employed to their behoof as if according to the destination in the contract. However the LORDS found the reasons of suspension relevant, for they thought that the assignee could be in no better case than the cedent, who could never have gotten it without fulfilling of the said condition.

No 58.

Fol. Dic. v. i. p. 598. Spottiswood, (CONTRACTS.) p. 63.

*** A similar decision was pronounced 10th November 1687, Shaw *against* Forbes, No 43. p. 4381. *voce* FIAR ABSOLUTE, LIMITED.

1628. November 14.

CUMING *against* CUMING.

PROCESS was not sustained at the instance of an assignee to a bond for the price of land, until he obtained from his cedent, who was then minor, a ratification of his alienation, after his majority, which the cedent was obliged to grant by a separate back-bond of the same date; but the buyer was obliged to pay annualrent to the assignee yearly till the sum should be paid.

No 59.

Fol. Dic. v. i. p. 598. Durie.

*** This case is No 13. p. 9147.