

to the cedent, was read to him, and if he knew the contents thereof and was acquainted with the clauses which differ from the contract, and rested content therewith; or if he was any ways ignorant thereof, and the clauses kept obscure from him.

*Act.* Advocatus. *Alt.* Stuart. Gibson, *Clerk.* *Vid.* for the first part of this decision, 15th July 1642, La. Garleis; and 21st March 1635, Lo. Yester.

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1635. *December 12.* JOHN SEATON *against* JAMES CLERK.

By contract betwixt John Seaton of Achorty and Mr Robert Udney, it is provided that neither of the parties shall take any right of the teinds of the other party's lands; and if any does, that the same shall accresce and belong to the other party, his heirs and successors to his lands:—after which contract, the said Mr Robert Udney, then heritor of the lands of Tullichortie, dispones these lands to Mr William Barclay, who thereafter dispones the same to Mr James Clerk, defender, in this action of spuilie, and who is convened for spuiliation of the teind-sheaves of the said lands of Tullichortie, so acquired by progress from the said Mr Robert Udney;—the said Mr Robert, the time of the alienation, being tacksman of the teind-sheaves, as also he was heritor of the lands disponed; but neither having disponed his right of the teinds to the said Mr William Barclay, to whom he sold the lands, nor having made him assignee to that clause of the contract made before, as said is, betwixt him and the said John Seaton, providing therein that neither of them should take the right of the other's teinds of their lands, and, if they did, that the right should forefault to the other party; and the said Mr Robert Udney, after the alienation of the lands to Barclay, having made this Seaton, pursuer, assignee to his right of the teinds of the said lands so disponed by him, as said is, before which, Seaton, having also acquired new tacks thereof from the E. Marischal, and by virtue thereof pursuing spuilie against the defender; and he defending with the clause foresaid of the contract, alleging him to be successor to Mr Robert Udney in the said lands; and the clause being conceived in favours of his successors, *per expressum*, it must accresce and be profitable to him, and must liberate him from spuilie. The Lords repelled this allegiance, and sustained the action of spuilie, in respect the defender nor his authors was not made assignee by Mr Robert Udney to that clause of the contract, the time when the heritable right of the lands was disponed; for, as Mr Robert Udney, who disponed the land, might have pursued the defender, or Barclay his author, for the teinds thereof, so might the pursuer his assignee to his right:—likeas they found that the said Mr Robert might discharge that clause of the contract to the pursuer, notwithstanding that he had sold the land before that discharge to the excipient's author; by the which preceding alienation of the land, the defender alleged that he was in his place as successor in the lands to him, and so alleged that he could do nothing thereafter to his prejudice, in respect of the clause foresaid;—which the Lords repelled, as said is, seeing he was not made assignee to that clause, nor to no right of the teind which he then had; and the action of spuilie was sustained.

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