

thereof, even without the master's consent. And the word assignation properly and commonly taken, doth not signify an alienation of lands with *sasine* or tradition following thereupon, which ordinarily is in the words, *dare, concedere, alienare, disponere*, not *assignare*, which is ordinarily used in sums of money, tacks, rentals, and writs, or rights of lands, not of lands themselves. *3tio*. It is the *stilus* of writers to say, *heredibus et assignatis*; which especially *in cartis regis* cannot prejudice the superior; the King cannot be said to dispoise such a considerable interest of superiority, except he do it expressly; and if there were any thing in it, yet being the fault of the officers of state to suffer such a thing to pass, it cannot prejudice his Majesty.

Many arguments were adduced *pro et contra* from the feudal law and civil law, custom, and *Craig de feudis*; which the LORDS having fully heard *in præsentia*, and carefully considered, they repelled the whole allegiances, nor did they regard that the infestment was given by Dirleton to his own oye, because he was not *alioquin successurus*.

In præsentia.

Gilmour, No 80. p. 60.

No 11.

1686. January 20.

COLONEL BORTHWICK *against* THOMAS LAURIE, Merchant in Edinburgh.

THE LORDS sustained the delivery of a paper, though not to the party, but to another for his behoof, though he knew nothing of it, and so could not accept it.

Fol. Dic. v. 1. p. 511. Fountainball, v. 1. p. 394.

No 12.

1714. December 8.

THE LORD LINDORES *against* JOHN STEWART of Innernytie.

THE deceased and present Lord Lindores made a tailzie of their estate in favours of certain heirs, reserving a faculty to this Lord Lindores, who was *fiar*, to alter, innovate, and dispose of the estate at his pleasure.

The said present Lord Lindores did, in anno 1706, grant a procuratory for resigning the foresaid estate in favours of himself and the heirs of his body; which failing, to John Stewart of Innernytie, and other heirs therein mentioned, under prohibitory and irritant clauses, as well upon my Lord, the granter of the procuratory, as upon the other heirs of tailzie.

Upon this bond no resignation followed, nor was it registered in the register of tailzies; but both the two tailzies were put in the hands of Oliphant of Carpelew, with a doquet on the paper wherein they were wrapped, written by my

No 13.
The maker of a tailzie containing irritant clauses upon himself, and all the substitutes, has right to call for the deed as his proper evident, to be cancelled or not at his pleasure.