

of reduction of the defender's right; because, albeit the pursuer be assigned to the debt, yet he is not expressly assigned to the inhibition. *Answered*, that the extract under the pursuer's own hand was sufficient, he having extracted the same *ex officio*, as being clerk, and if he has taken out a wrong extract, he is liable for malversation. And farther, to instruct that it is a true extract, there is another extract produced under the clerk-depute's hand; and albeit the pursuer be not assigned to it *per expressum*, yet he being assigned to the debt, and to the bond, and to all right, title, and interest, that the cedent had, it will carry a right to the inhibition, and all legal diligence that has followed upon the bond, as being accessory thereto. THE LORDS sustained the pursuer's title, although his assignation was only to the liferent, and did neither assign the inhibition *per expressum*, nor contained these general words, "with all that has followed thereupon." And found the extract of the inhibition, out of the books of the sheriffdom of Perth, under the hand of the pursuer's own depute, to be sufficient in the action of reduction, reserving improbation to the defender, as accords.

No 10.

Sir P. Home, MS. v. I. No 80.

1738. July 18.

MATTHIE against ADAM.

THE right of brewing is implied in a feu-charter, though not expressed; but, though the feuer may brew and vend in his own house, Whether he may provide the barony in ale to the dissatisfaction of the baron's granting licences to other people? was a point here stated, but not determined.

No 11.

Fol. Dic. v. 3. p. 297. Kilkerran, (CLAUSE.) No 1. p. 120.

1748. July 5.

DUNNING against The CREDITORS of Tilliboall.

HALLIDAY of Tilliboall disposed the lands of Briglands to Mr Alexander Dunning, minister at Abernethy, and he disposed them to Alexander his son, bookseller in Edinburgh, who was infest therein.

A ranking and sale was pursued of the barony of Tilliboall, in which Mr Dunning appeared, and craved to have his lands, with the teinds, struck out of the sale, as he was infest prior to the creditor's adjudication.

Answered, His lands must be struck out for the reason given, but he has no right to the teinds, much less is he infest therein, which therefore having remained with the disposer, were affected by the adjudication of his creditors.

Replied, A disposition of lands will carry the teinds, if by circumstances it appear to have been the intention of the parties, that they should be compre-

No 12.
Disposition of lands with an assignation of all tacks conveys the teinds of the lands disposed.

No 12. hended; as if the tacks were for stock and teind, and these assigned: So upon circumstances was found, 27th February 1672, Scot against Muirhead, *voce* TEINDS; 29th June 1698, Callendar against Carruthers, *IBIDEM*. Here the tack of the lands in question, which was assigned, bore a duty for all other demands whatsoever, thereby excluding any claim of teind: The price was twenty-two years purchase, an adequate value, as there was no house, nor policy, on the ground; and the disposition contained an obligation to relieve from bygone stipends, without saying any thing of future ones, which were only payable out of teinds; and the teinds have been possess without quarrel from the disponer since the disposition in 1711.

Duplied, In both the decisions cited, the circumstances were much stronger than in the present case; but the material difference is, that in them the question was with the disponer or his heir, where there was room to argue from presumptions of what was intended to be disponed; but here it is with singular successors who had got a real right, which it was impossible the disponee could have on his disposition, as there was no warrant therein for an infestment in the teinds; though it might have been sustained as a virtual disposition against the disponer, on which a title might have been completed, either by a further voluntary right, or by diligence.

On the first report, it was remitted to the Lord Ordinary to enquire in what manner the disponer's own right was constituted, and it appeared the lands and teinds of Tilliboall were erected into a barony, of which Briglands was part, and he infest therein; on which it was hinted, that perhaps there was never an infestment on these tiends; and so the disposition, if it were explained to comprehend them, with possession thereon, carried them without infestment: But the determining this point was superceded; by observing a nullity in the creditors' infestment on their adjudication of the barony, to wit, that it contained no symbol at all; so that both rights were personal.

THE LORDS found, That the purchaser of Briglands had a right to the teinds as well as the stock, preferable to that of the creditors' adjudgers; and, therefore, both stock and teind ought to be struck out of the sale.

Reporter, *Tinwald*. For Dunning, *Williamson*, Alt. *Scrymgeour*. Clerk, *Gibson*.
Fol. Dic. v. 3. p. 297. D. Falconer, v. 1. No 269. p. 361.

1756. December 14.

JAMES NEIL, Merchant in Ayr, *against* JOHN CAMPBELL of Skerrington.

CATHCART of Drumjoan was debtor to M^rRae in a certain sum by bond.

He died leaving three heirs portioners, the said M^rRae, William Campbell, and Abigail Rankin, mother to the defender.

No 13:
 Sale of an
 estate with
 all right in
 the seller,