

No. 168. forfeiture of the right, which may not continue so long as the assignation. In fine, it would seem somewhat different from equity, if the Court sustained a virtual assignation, (which is scarcely disputed in the present case) where any ordinary assignation differing in nothing but the form, could not be pleaded for by the most sanguine lawyers.—A Court of Justice can never, upon its own authority, violate the agreements of private parties, so as to do a wrong to the one, in order to favour the other, from considerations of public utility. And if, from the contract itself, and from the interpretation of the law, it is evident, that the rights of the husband are inconsistent with those of the landlord, there can be no dispute which should yield.

The Court, upon advising informations, ordered a hearing, and afterwards determined the point by the following judgment :

“ The Lords remit the cause back to the Sheriff *simpliciter*.”

Act. J. Dickson. Alt. Hay Campbell. Clerk, Ross. Reporter, L. Probationer Covington.

*Fol. Dic. v. 4. p. 325. Fac. Coll. No 170. p. 79.*

1786. February 5. WILLIAM ROSS *against* JAMES MONTEITH.

No. 169.

Bygone rents unpaid, an inseparable burden on an assignment to a lease.

A tacksman of lands assigned his lease to certain persons, as trustees for his creditors. These trustees having entered into the possession, were sued for payment of the rents of two years antecedent to the assignment in their favour.

The Lord Ordinary found, That by accepting the assignation the defenders had subjected themselves to payment of the arrears of rent then due.

A reclaiming petition being presented to the Court, it was held to be perfectly clear, that those arrears were a burden inseparable from the right to the lease; and therefore,

The petition was refused without answers.

Lord Ordinary, *Alva*.

For Petitioners, *Cullen*.

S.

*Fol. Dic. v. 4. p. 328. Fac. Coll. No. 155. p. 390.*

1788. January 22.

PATRICK ALISON *against* MARGARET PROUDFOOT and ADAM LITSTER.

No. 170.

Lands let for 19 years, not to be subset, without a special authority from the landlord.

Patrick Alison let part of the lands of Newhall, for nineteen years, to James Wilson, “ secluding his heirs, executors, adjudgers, and assignees, except in the event of his wife’s surviving him, in that case he shall have power to assign to her what years of the tack shall be then to run.”

James Wilson assigned the lease to Margaret Proudfoot his wife, who immediately after his death subset the lands to Adam Litster. An action was brought by Mr. Alison, the landlord, for setting aside this sub-lease, when it was