

- No 4. *ed*, That his assignation was null, because it was granted to him in *anno* 1618, whereof he never made intimation, obtained possession nor letters conform, but the cedent retained possession three years after the assignation, to the time of his decease; and therefore the assignation was simulate and null, proceeding from him *qui dedit et retinuit*.

Haddington, MS. No 2640.

1623. February 27. PAIP against L. WOLMET.

No 5.

IN an action of suspension betwixt Mr John Paip and the L. of Wolmet, for payment of a pension of diverse loads of coals given to Mr John Paip; the LORDS found, that the granter of the pension, nor his heirs, were not obliged to carry the coals to the dwelling-house of the pensioner, where the pension bore not the same *specific*; but that it was sufficient to the granter of the pension, and his successors, addebted therein, to deliver the same at the coal-hill to the pensioner, to be transported upon his own charges where he pleased to carry the same; and that sicklike in other pensions of that nature and quality, as of victual, that the pensioner ought to carry the same from the barn door and ground of the land upon his own expenses, and that the granter is not obliged in the said carriage, except the pension be so expressly granted, and no otherways.

Act. *McGill*.

Alt. ———.

Clerk, *Hay*.

Fol. Dic. v. 2. p. 56. Durie, p. 537.

* * * Haddington reports this case :

1623. February 28.—MR JOHN PAIP having a pension of four bolls meal, and two dozen loads coals, to be paid to him yearly by the Goodman of the Wolmet, pursued him to lay them in to him in his house in Edinburgh. Wolmet *alleged*, That he should not carry them, but only pay them. THE LORDS found, that since he was only bound to pay them, he could not be compelled to lay them in, but only pay them on the coal-hill.

Haddington, MS. No 2793.

No 6.

A prelate granted a pension out of his patrimony, not only *cum potestate transferendi etiam*

1625. July 23. MINISTER of KIRKLISTON against WHITELAW.

IN an action betwixt the Minister of Kirkliston and Patrick Whitelaw, a pension being granted by the umquhile Bishop of St Andrew's to Mr John Arthur, Commissary of Edinburgh, *cum potestate transferendi etiam in articulo mortis*, with power also to that assignee, to transfer the same at any time, be-

fore that assignee's death, in the person of any other, who should also bruike the same, during the lifetime of him who should receive the last translation ; which pension being transferred by umquhile Mr John Arthur before his decease, in favours of his wife, and she having transferred the same in favours of her son ; who pursuing letters conform to the said pension ; the Bishop of St Andrew's compearing, and alleging the nullity of that pension, as being given in prejudice of the successors of the granter thereof, and in diminution of the rental of the benefice, and to the hurt of the kirk ; this allegiance was repelled, and the pension sustained.

Act. Hope.

Alt. Mowat et Primrose.

Clerk, Gibson.

IN this above written process of Patrick Whitelaw, there was produced for the minister of Stow, a decret given by the Commissioners of Parliament, appointed for modification of the minister's stipends, conform to the act of Parliament *anno* 1617 ; by the which decret, the foresaid pension of L. 100, granted to the said Mr John Arthur, *cum potestate transferendi*, as said is, was appointed to remain with Mr John Arthur during his lifetime, and after his decease, so much of the said pension as was paid out of the parish of Stow, viz. L. 50 thereof, was ordained to be paid to the minister of Stow, for a part of his stipend in all time coming ; which decret being quarrelled by Patrick Whitelaw assignee foresaid, as null, because before that sentence, the said Mr John Arthur had transferred his right of the said pension to his wife, he being obliged to do the same to her, by an express clause contained in the contract of marriage made betwixt them ; and so she not being called to that sentence, who was a party hurt thereby, and having right to the said pension, the said decret could not be sustained ; especially seeing the Commissioners, givers of that sentence by the act of Parliament, which was the warrant of their proceedings, had no power granted to them to take any man's right from him : Which allegiance was repelled, in respect Mr John Arthur the husband was called, and compeared in that decret ; and the LORDS finding that this was a decret of Parliament, they thought themselves not Judges to annul a sentence of Parliament so summarily by way of exception.

Fol. Dic. v. 2. p. 55. Durie, p. 180.

1628. December 17.

CHALMER against L. CRAIGIEVAR.

THERE was a pension granted by Patrick Abbot of Lindores to Mr William Chalmers out of his abbacy, for Mr William's lifetime, with power granted to him to make assignation of the said pension *in articulo mortis* to any he pleased. Mr William assigneth the pension to his son three years before his decease, but remained in possession thereof all his lifetime ; and after his decease, his son enjoyed the same, by virtue of the same assignation, for the space of thirty

No 6.

in articulo mortis, but with the same power to the assignee. This pension, though given in prejudice of the successors of the granter, and in diminution of the rental and hurt of the kirk, was sustained.

No 7.

Found in conformity with Bishop of Aberdeen against his Tenants, No 4. p. 10058.