

S E C T. X.

Assignation to Mails and Duties, with other Rights.

1622. December 17. HAMILTON against ALEXANDER.

JANET HAMILTON of Kinbrachmont, obtained decret for a sum of money against Sir William Anstruther, to which George Meldrum being made assignee, comprises the lands of Anstruther upon the 8th September 1621, and arrests the farms and teinds, and calls to have them made furthcoming. Robert Alexander produces an assignation, made by Sir William Anstruther to him, of the farms and teinds of his lands, for payment and relief of certain debts owing by Sir William to him, and for which he was caution for Sir William; and being admitted, *alleges*, That he should be preferred for the farms; because his assignation was in May 1621, anterior to the comprising, and intimated before the sasine taken thereupon.—THE LORDS found, That the comprising having denuded the cedent before any possession could be lawfully apprehended by the assignee, the sasine might be drawn back to the decret.—Alexander *alleged* for the teinds, That the comprising was not *modus habilis*, because Sir William Anstruther was infest heritably in the teinds, and the compriser had them not adjudged that way, and was not infest.—THE LORDS, considering that the compriser could not perfectly know the state of Sir William's right, and had only comprised all right he had to the teinds, it was sufficient to sustain this action against the assignee, being a conjunct person, brother-in-law to Sir William, ay and until his right was impugned by a party having more valid heritable right.

Fol. Dic. v. 1. p. 181. Haddington, MS. No 2703.

1627. February 13. SAMUEL against SAMUEL.

IN an action betwixt Samuel and Samuel, for payment of a tack-duty contained in a tack set by John Forrester, heritor of the lands set in tack, and which appointed the duty thereof to be paid to the pursuer, being a creditor to the setter, and which duty was paid diverse years of the tack to the pursuer; the heritable right of the lands being thereafter within the years of the tack, comprised from the setter of the tack; which compriser compeared in this process, viz. the Lo. Corstorphin, and claimed the duties of the tack to pertain to him, by the right of his comprising of the lands.—THE LORDS found, That the compriser had right to the said tack-duty of the years since his comprising, and

No 49.

A compriser of lands and teinds, in a competition of mails and duties, preferred to an anterior assignee who had not apprehended possession before the sasine upon the comprising, but had only intimated his assignation after the comprising, and before the sasine.

No 50.

A tack being set by an heritor, and therein the tack-duty appointed yearly to be paid, not to himself, but to one of his creditors, by virtue whereof the said creditor