

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

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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.

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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

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was in possession, the Lords preferred this creditor to a posterior compriser not infest.

not this pursuer, notwithstanding that the tack expressly bore, and appointed the duty to be paid to him; and albeit it had taken effect by possession, before his comprising; for albeit the compriser, during the space of the tack, the same being set, as said is, before the comprising, could not move the tacksman; yet he had right to the tack-duty, seeing the setter of the tack could not appoint the duty to be paid to any other person effectually, so as it could last longer than he himself remained heritor; and his right being comprised from him, the duty could not pertain to that person to whom he had appointed the payment thereof to be made, after his own right was taken from him. The cause being thereafter called, 27th February 1627, the contrary hereof was found, and the tack-duty found due to him to whom the tack was appointed to be paid; which was *de novo* done over again in favour of the tacksman and pursuer.

Act. Stuart.

Alt. —.

Clerk, Hay.

Fol. Dic. v. 1. p. 181. Durie, p. 271.

No 51.

1628. March 27. LORD BLANTYRE *against* PARISHIONERS of BOTHWELL.

A TACKSMAN of teinds having assigned the teind-sheaves, payable by the heritors, in security and payment of a debt; this was found only a personal right, though clad with possession, and was not sustained to compete with a posterior assignee to the tack itself, a tack being a real right.

Fol. Dic. v. 1. p. 181.

* * * See The particulars of this case, No 7. p. 1780.

No 52.

1628. December 13. HUNTLY *against* HUME.

THE cedent continuing still proprietor of the lands, notwithstanding of assignation to the mails and duties, must have a power of alienation; and of consequence the purchaser, who has right to the lands, must of necessary consequence have right to the produce of the lands; therefore it is, that the assignee's right to mails and duties, which is only a personal claim against possessors, and no real right in the lands, must fall as soon as the cedent is denuded by infestment.

Fol. Dic. v. 1. p. 181.

* * * See The particulars of this case, No 12. p. 2764.