

the time thereof depending among five or six parties, pretending right by the dependence whereby the tutor was excluded. The pursuer *answered*, That the defender's name was not borrowed without his knowledge, but that he accepted thereof, and entered to possession; and as an appriser is not obliged to possess, but if he possess, must be answerable for the rents of the lands, conform to the rental, so must the defender.

THE LORDS found the defender not liable to diligence, by virtue of the trust, albeit he did possess, but ordained him to count for his intromission, and to condescend what diligence his father did as tutor, that if he be found deficient therein, there might be an additional account to what he intromitted with.

*Fol. Dic. v. 1. p. 243. Stair, v. 1. p. 415.*

No 69.

1672. July 18. JANET WATSON *against* Mr WALTER BRUCE.

UMQUHILE Mr Robert Bruce granted an assignation to Mr Walter Bruce, bearing to be for relief of his brother's cautionry, and for relief of his wife Janet Watson, whereupon she pursues Mr Walter to relieve her of certain sums, wherein she was engaged for her husband. The defender *alleged*, That this assignation being for his own relief, and for her relief, it behoved to import his relief in the first place, and her's in the next place; and that her engagement could import no distress, because she being a wife, as to her, they were null.

THE LORDS repelled both these allegiances; and found, that the pursuer might forbear to make use of her privilege as a wife, and insist for her relief: And found the clause imported proportionable relief to either party, according to their engagements.

The defender further *alleged*, That he could be no further liable than to transfer the right assigned to him proportionably, and that he was obliged for no diligence thereby.

THE LORDS found, That the accepting of the assignation did not oblige the defender to diligence, unless the pursuer had required him either to do diligence, or to transfer it to her, that she might do diligence for herself.

The pursuer then *alleged*, That the defender had transferred the right assigned, and so was liable to her proportionably. It was *answered*, The defender would make retrocession to the pursuer.

THE LORDS found the allegiance for the pursuer relevant, and that she was not obliged to accept of a retrocession, seeing the defender had once denuded himself.

*Fol. Dic. v. 1. p. 243. Stair, v. 2. p. 106.*

No 70.

A cautioner accepting of an assignation, bearing to be for relief of his own, and another's cautionry, was not found obliged to do diligence for benefit of the the other cautioner, unless he were required either to do diligence, or to transfer.