

quarrel, nor any deed lawfully made by the wife when she was *soluta*) ought to be made furthcoming to the pursuer.

THE LORDS repelled the allegiance. *In presentia.*

*Fol. Dic. v. 1. p. 181. Gilmour, No 24. p. 19.*

No 55.

1666. February 6.

WATSON against FLEMING.

THERE being an infestment of annualrent granted out of lands and teinds, and an assignation to the teind duties, in so far as extended to the annualrent, the teinds and lands were thereafter apprised from the common author before the annualrenter had obtained possession, by his real right, of the annualrent, but only by his assignation to the teind duties. It was *alleged* by the appriser, That the assignation to the teind duties could give no longer right than the property thereof remained in the cedent's person; which ceasing by the apprising, the assignation ceased therewith, as is ordinarily and unquestionably sustained in assignations to mails and duties of land. It was *answered*, That there was great difference betwixt lands which require infestment to transmit the same, and teinds which require none, but are conveyable by an assignation; for, if this had been by an assignation to the tack of teinds, *pro tanto*, it would have been unquestionably valid; and therefore being an assignation to the teind duties, it is equivalent as a disposition to lands, which would carry the right of a reversion, though not exprest, and though there were no more to dispose but the reversion only. It was *answered*, That if the assignation had been to the teinds, that is to the right, or if it had been to the full teind duty in the tack, or of certain lands, then the case might have been dubious; but being not of the teind duties of any particular lands, but out of the first and readiest of the teinds of several lands, it was not *habilis modus*.

Which the LORDS found relevant.

*Fol. Dic. v. 1. p. 181. Stair, v. 1. p. 348.*

No 56.

Assignation out of the first and readiest of the teinds of several lands in security and payment of a debt, was not found good against a posterior apprising of the lands and teinds.

1732. November.

BAILLIE against EARL of MARCH.

A PROPRIETOR of an entailed estate having granted to a creditor assignation of mails and duties, the assignation, after the granter's decease, was found effectual against the heir; for, though he did not represent the defunct with respect to the debt in question, contracted contrary to the entail, yet, the entail not being recorded, the debt might be made effectual against the estate by adjudication, and therefore the heir could have no just interest to quarrel the form of the conveyance. *See TAILZIE.*

No 57.

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