

No 14. ing to his intromission; and albeit there was a symbolical tradition, yet the goods still remained upon the ground, and were kept by Sir Alexander's own herds and servants; so that unless Keams, conform to the disposition, had actually taken away the goods, he cannot be further liable to count but for his actual intromission. THE LORDS found the defender only liable to count for Keams's actual intromission.

Fol. Dic. v. I. p. 238. Sir Patrick Home, MS. v. I. No 158.

No 15. 1706. June 27. M' MICKEN against KENNEDY.

AN assignation in security taken by a creditor from his debtor to mails and duties, and intimated to the tenants, was found not to oblige the assignee to account for these rents, unless he had debarred the cedent or his creditors from uplifting.

Fol. Dic. v. I. p. 237. Forbes.

* * See this case, No 62. p. 524.

1709. July 22.
ALEXANDER DUNCAN of Strathmartin against MR ALEXANDER GRAHAM
of Methie.

No 16.
An assignation to a tack, in security of a debt established by an infeftment of annual-rent, was found not to make the assignee possessing by virtue thereof liable to intromit beyond his annualrent, or accountable for more.

IN the ranking of the Creditors of Wintoun of Strathmartin, Alexander Duncan, who had a disposition of the lands from the debtor's heir, objected against an interest produced by Mr Alexander Graham, viz. two heritable bonds with infeftment granted to his author by Wintoun, that the same must be understood satisfied and paid, in so far as he, the common debtor, assigned Alexander Graham's author, for the more secure payment of his money, to a tack of lands paying more duty than his annualrent amounted to, by virtue whereof he entered to the possession, and ought, or is presumed to have continued to uplift the whole rents; unless he can make appear, that he was debarred by another creditor.

Answered for Alexander Graham; His author intromitted with no more than satisfied the annualrent of his money, nor was obliged to intromit with, or count for more of the rents; seeing he debarred no other creditor from access thereto.

THE LORDS found, that the assignee was not liable to intromit beyond his annualrent, nor countable for more. For they distinguished betwixt a voluntary right in security, and a legal right by diligence of apprising or the like.

Fol. Dic. v. p. 238. Forbes, p. 350.