

No 48.

1627. February 10. Mr JOHN ROSS *against* BLAIR of Tarsappy.

A TACK set to a man during his lifetime, and to his heirs indefinitely after him, for two or three ninetee~~n~~ years tacks, may be assigned by the principal tacksmen to any body, if the assignee be not excluded *per expressum* in the first tack.

Fol. Dic. v. 2. p. 75. Spottiswood, (TACKS and ASSEDATIONS.) p. 326.

No 49.

1629. July 14. WARDS *against* BALCOOMIE.

AN excamber getting in his charter a clause of regress against the excambed lands, in case of eviction, to him and his heirs, without mentioning assignees, the clause was nevertheless extended in favour of a singular successor in the lands.

Fol. Dic. v. 2. p. 76. Durie.

. This case is No 3. p. 3678. *voce* EXCAMBION.

1627. March 27. L. WEST-NISBET *against* L. MORISTON.

No 50.
A bond of annuity to a wife, granted by a third party, is not attachable by the husband's creditors. See No 44. p. 10365.

WEST-NISBET having arrested in Moriston's hands some yearly annuity, which, by decret-arbitral, he was obliged to pay to the Laird of East-Nisbet's wife and bairns, for their maintenance and entertainment, and desiring the same to be made furthcoming to him, for satisfying of a debt addebted to him by the Laird of East-Nisbet, and which he had paid as cautioner for him, seeing the moneys addebted by Moriston, albeit appointed to be paid to East-Nisbet, his debtor's wife and bairns, yet the same ought to satisfy the husband's debts who was living, and who was *dominus bonorum*, and whose money the same properly was; and the adjection of the payment to be made to his wife and bairns, done to prejudice the creditors, ought not to be allowed in their defraud; and it is more agreeable to reason, that he and his wife and bairns should want, than that the creditors, who were likely to want in his default for his debt, should be so defrauded.—THE LORDS found, that these sums being ordained to be paid for the sustentation and entertainment of the wife and bairns by that decret arbitral, which was not a decret given by the Lords of Session, but by friends, yet it could not be arrested for the husband's debt, but the same ought to be paid and converted to their aliment, and the sustentation of their life, as was destined in the said decret.

Act. Nisbet.

Alt. Mowat et Craig.

Clerk, Hay.

Fol. Dic. v. 2. p. 76. Durie, p. 295.

. Spottiswood reports this case :

No 50.

CRANSTON of Moriston being in possession of East-Nisbet's estate, as donatar to his liferent, by moyen of friends obliged himself to pay 2000 merks yearly to John Home of Renton, for the entertainment and aliment of the Lady East-Nisbet and her bairns. Renton having charged him for the Martinmas terms duty 1626, he suspended upon double poinding; *alleging*, That that sum was arrested in his hands by diverse of East-Nisbet's Creditors. Compeared West-Nisbet, and produced a decret, and alleged he should be answered and obeyed, because it behoved to be reputed the Laird of East-Nisbet's gear, seeing, *stante matrimonio*, the wife and the husband could have no sundry sums. *Answered* by the charger, That the allegiance ought to be repelled, because the sum contained in the said contract could not be arrested by any for a debt owing to them by East-Nisbet elder, seeing it belonged not to him, nor was ordained to be paid to him or any in his name, but allenary to Renton for the aliment and sustentation of the lady and her children during her husband's lifetime.—THE LORDS found, that the Lady should be preferred to any creditor, and that the said sum could not be arrested for her huband's debt, as had been found before in favour of the Lady Airth.

Spottiswood, (HORNING'S.) p. 154.

1630. March 3.

MURRAY against MYLES.

ONE Myles in Dundee being infeft by Coustoun in a tenement in Dundee, under reversion personally to himself allenary in his own lifetime of 10 shillings; shortly thereafter Coustoun useth an order of redemption against Myles, and intents declarator thereon in his own lifetime, and constitutes Robert Murray assignee to the order and summons; and thereafter, before declarator, he dies; whereupon the assignee, after transferring in him as assignee, pursues declarator; and the defender *alleging*, that the reversion, being personal, was extinct; the LORDS repelled the allegiance, and sustained the declarator pursued by the assignee; for the LORDS found, that albeit the reversion was only personal, yet seeing he, to whom it was granted, had used the order before his decease, and had intented summons of declarator; his dying before the sentence, after the order, made not the order to cease, nor the reversion to be extinct, but that it might be prosecuted lawfully by his assignee, or by his heir, if he had not made an assignee; seeing, by the order, he had declared his will, and thereby had redeemed; and the sentence was only a declarator, finding that the order used by himself was good.

No 51.

An assignee found to have right to proceed in a declarator of redemption, though the cedent died during the dependence of the declarator.

Act. *Russel.*

Alt. ———.

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 75. Durie; p. 498.