No 2.

1627. *June* 28. LAIRD of MADRIDGE and his Spouse, *against* COCKBURN.

THE husband being infeft in an annualrent out of lands, he dispones the same to two of his bairns, reserving his own and his wife's liferent, who was not infeft with her husband in conjunct-fee. She pursues the occupiers of the lands after her husband's decease for the annualrent. They, with concurrence of the heir, allege the reservation can make her no formal right.——THE LORDS find she has good right by reservation against the heir and his tenants, although it would not be sufficient against a singular successor having right to the lands.

Fol. Dic. v. 1. *p.* 511. *Auchinleck, MS. p.* 120.

No 3.
Where a right arises to a third party from a donation *inter virum et uxorem stante matrimonio*, the revocation of such donation will not void the right of the third party.

1633. *December* 18. BISHOP of ST ANDREWS *against* WYLLIE.

THERE being a pension granted of victual, by the Bishop of St Andrews, in *anno* 1584, *cum potestate transferendi* in favours of an assignee, and with power to that assignee *de novo* to assign to another, who should bruik during his lifetime; the pensioner having made his daughter assignee, who being thereafter married upon one Wyllie a writer, and she *durante matrimonio* having made her own husband assignee to the pension, who, after that assignation, obtained decreet at her own instance, with consent of her husband, of letters conform to the pension; likeas, certain years after this assignation made to her husband, she and her said husband miskenning the first assignation, assigned the pension to their daughter, procreate betwixt them, by the which second deed, the daughter acclaimed the benefit of the said pension during her lifetime; the matter and right to the victual contained in the pension, being disputed in a double poinding, whether she, as assignee, or the bishop, should be answered thereof; for the Bishop *alleged*. That the said pension was become expired, by the said prior assignation, made by the wife to her husband, after which there was no power by the pension to assign *de novo*; specially seeing the husband had obtained possession, conform to his assignation, and after his wife's decease, had granted two discharges of the duty of the said pension *proprio nomine*, and as having right in his own person; and whatever assignation was made to the daughter after the first, being kept up betwixt them, to make use thereof, as they pleased, and to the evident intended prejudice of the bishop, it ought not to be respected; the daughter, on the other part, *alleging*, that the first assignation was null, being done betwixt husband and wife, *inter quos donationes factæ de jure non valent, nisi morte confirmentur*; likeas this is revoked *tacite*, (which is sufficient) by the assignation made to the daughter, which is done with consent of the husband, and who, as father and administrator to her, obtained decreet at her instance upon that assignation; and whatever acquittances the father has thereafter granted, must only be reputed as administrator

to her; so that the first assignation, if any were, took never effect, and is null in law, and cannot be respected, as if thereby the pension were extinct;—THE LORDS found, that the bishop ought to be answered and obeyed, and that the daughter, the assignee, had no right, and repelled her allegeance; for the LORDS found, that the first assignation denuded the pensioner, that thereafter she could not make any other assignation to her daughter; neither found they the posterior assignation to be such a deed, as whereby the first was revoked, in prejudice of the Prelate *cui jus erat acquisitum* by the first deed; specially that alleged deed of the second assignation, whereby it was alleged to be revoked, being done by himself and his wife also, which could not be thought as a revocation in law, that he should be both the revoker, and the person from whom it was revoked, and being private deeds betwixt most conjunct persons, which they might use and destroy at their pleasure, and which was not allowable. No 3.

Act. *Per Advocatum Regis et Stuart.* Alt. *Nicolson et Mowat.* Clerk, *Hay.*

Fol. Dic. v. 1. *p.* 513. *Durie, p.* 696.

1634. *June* 26. LAIRD of RENTON *against* LADY AITON.

No 4.

A CLAUSE in a contract conceived in favours of a third party, albeit not of his knowledge, cannot be discharged by any of the parties contractors, without the consent of him in whose favours it is introduced, if the contract be registrated; for in that case, it is as good as it had been delivered to the said third party, and had become his evident.

Fol. Dic. v. 1. *p.* 511. *Spottiswood,* (CONTRACTS.) *p.* 72.

*** Durie reports this case:

1634. *June* 25.—IN a spuilzie of teinds founded upon a right made by John Stuart of Coldingham, and Francis Stuart L. Moriston, and Robert Douglas, to the pursuer of the same teinds; at the time of the making of which right, the pursuer gave a bond to the said persons, authors of his right, that he should never exact more for these teinds, now acclaimed from the Lady Aiton, but only L. 100 yearly; which bond is registrated in the books of Council, and made public; and upon which bond, the Lady Aiton defender, propones this exception, that she could not be found to have committed spuilzie; which exception the LORDS found relevant, and sustained it to elide the spuilzie; notwithstanding that the pursuer *replied*, That this bond containing the foresaid clause, could not defend her, the said clause being conceived in favours of a third party, who was neither present the time of the parties contracting thereon, she not being a party, nor knowing any thing of the bargain, and doing nothing upon it, nor being accepted by her, nor by none in her name, and so behoved to be unprofitable to her, being *stipulatio alteri facta*, which is not