

No 53. ance, and found, that this tack being set to the tacksman during his lifetime, he might lawfully and validly make an assignee thereto, and so sustained the assignation, seeing the cedent was on life.

Act. Craig.

Alt. Mowat et Hog.

Clerk, Gibson

Fol. Dic. v. 2. p. 75. Durie, p. 832.

* * A similar decision was pronounced, Duff against Fowler, 16th July 1672, No 95. p. 10282. *voce* PERSONAL and REAL.

1637. July 4.

TENNANT *against* FUTHIE.

No 54.

An annuity payable to a wife for aliment, granted by a third party, does not fall under the husband's *jus mariti*, she not being otherwise alimented by him; nor will payment made to the husband, or compensation upon his debts, afford a defence against her. See No 44. p. 10365.

ONE Tennant, wife to James Futhie, having received an obligation of 100 merks yearly, to be paid to her by James Futhie, her father-in-law, for her aliment, her husband being then out of the country a certain space, and she charging for payment, and the father-in-law suspending, that this bond did pertain to his son, her husband, and was *in bonis ejus*; likeas, his said son being come to the country, and living in household, he and his wife together, in conjugal duty, he had made payment to him of a part of the sum, and had reported his discharge thereupon, which ought to liberate him of this charge given to him at his good-daughter's instance, in the absence of her husband, who was now out of the country; and also he *alleged*, That the said son her husband was addebted to —, in the sum of —, whereto this suspender had right, and so he was content to compensate *pro tanto*.—THE LORDS found none of these reasons relevant, for they refused to allow the payment made to the husband, or to compensate for the debt owing by the husband, albeit the man and his wife were in family together, and that there was no separation betwixt them, but that the woman was presently with child to her husband, in respect that the bond was given to the wife for her aliment, and the husband was found to have no right thereto; for the husband being now absent, the wife might seek a modification of her husband's own gear, if this money had been properly his own, much more might she seek this, which was destined for her own maintenance and aliment.

Clerk, Hay.

Fol. Dic. v. 2. p. 76. Durie, p. 848.

No 55.

A life-rent annuity, granted by a

1639. March 8. L. KILCALDRON *against* L. BALGILLO.

THE L. Kilcaldron and his spouse having charged the L. Balgillo for payment of the annualrent of 4000 merks, addebted by him to Kilcaldron and his