

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

spouse, conform to the bond granted to her and her daughter, gotten betwixt her and Mr Henry Duncan, her first spouse, in fee, he suspends, *alleging*, That Kilcaldron spouse to the wife liferenter is owing to him for greater sums, and he is content to compensate *pro tanto*. The charger *answered*, That compensation ought not to be admitted, in respect that the said annualrent charged for is destined by the husband for the wife's aliment, and she has no other means to live by, but by this sum, neither of her own, nor by her present husband; and it were against conscience and justice, that her means should be taken from her, which she has from her prior husband, for payment of her second husband's debt, and that herself should starve for want of means of life. THE LORDS found the reason of compensation relevant, notwithstanding of the answer; and found, that the destination of the sum libelled, made by the husband to the wife for her aliment, could not hinder the compensation, seeing neither was this destination allowed by any Judge to be alimentary, nor found to be so; neither bore the bond, whereupon the charges were raised, that the sum was destined, and payable for aliment.

Act. Barclay.

Alt. Mowat.

Fol. Dic. v. 2. p. 76. Durie, p. 880.

No 55.
first husband, found affectable by a second husband's creditors, though the children had no other means of subsistence, because it was not granted in the form of an alimentary provision.

1661. December 6.

HUME against HUME.

JAMES HUME, as assignee to a reversion and order of redemption, used by the Earl of Hume, against Abraham Hume, pursues declarator of redemption and removing in the same process. The defender *alleged*, Absolvitor, because the reversion expressed not assignees; and therefore, the defender cannot be obliged to renounce to the pursuer an assignee. *2dly*, At the time of the consignment, the Earl required the wadsetter to subscribe the renunciation to a blank person upon a back-bond, declaring the same to the Earl's behoof, which he was not obliged to do by the tenor of the reversion. *3dly*, No declarator till the Earl produce the sum at the bar, seeing he lifted it himself.

THE LORDS found, That albeit the reversion expressed not assignees, yet seeing the order of redemption was used by the Earl himself, the assignee had sufficient right; but decerned the defender to renounce only in favour of the Earl and his heirs, but not to dispone to any other person, as the Earl desired; and declared, there should be no decret extracted till the consigned money were produced and given up, neither did they decern in the removing till the parties were further heard thereupon.

Fol. Dic. v. 2. p. 75. Stair, v. 1. p. 65.

No 56.
Where the order of redemption was used by the reverser himself, the assignee was found to have sufficient right to insist in declarator of redemption against the wadsetter.