

cedent's decease, as if the cedent had raised letters of horning against his debtor, and after the charge had died, his assignee ought not to have denounced the debtor upon that charge; neither can an assignee to a decret, execute or do any deed upon that decret after his cedent's death, while the same be transferred in the assignee, except the assignation had been lawfully intimated in the cedent's lifetime, as was done 23d January 1624, Stevenson. No 24. p. 836.

Act. *Mowat.*Act. *Gibson.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 78. Durie, p. 591.*

\* \* \* Spottiswood reports this case :

THERE was a decret-arbitral pronounced betwixt the Prior of Ardchattan and the Captain of Clan-Ronald, whereby the Captain was decerned to pay a certain yearly duty to the Prior for his teinds. The Captain deceasing, the Prior charged his son to enter heir to him, to the end he might fulfil the said decret, and after assigns his son John Campbell to the said decret-arbitral, together with the charge foresaid, and all that had followed on the same. Upon which assignation, after the Prior's decease, John pursued the Captain as son and heir, at least as lawfully charged to enter heir to his father, to make payment of the sums decerned in the decret. *Alleged*, No process against the defender as lawfully charged to enter heir, because the charge was used at the pursuer's father's instance, whereunto the pursuer could not be made assignee; but the cedent being dead, the charge must expire, and the pursuer must use one at his own instance. *Answered*, The charge being a part of the process, the pursuer must be assigned to it, as well as to a summons, or to any other letters, &c.—THE LORDS sustained the process at the assignee's instance.

*Spottiswood, (HEIRS.) p. 142.*

1637. February 28.

HUME against CRAW.

ONE Craw having set a tack of his lands of ——— to another Craw, during his lifetime, not bearing, to be set to his heirs and assignees, nor yet bearing any clause excluding assignees; which tack being assigned by the tacksman to one Hume, who pursuing the setter of the tack, and another called ——— Craw, (who had acquired after the tack, and after inhibition served thereon, an heritable right of the lands from Craw, setter of the tack, and by virtue whereof they retained among them the possession of the lands), for payment of the mails and duties of the lands, as was provided by the tack, if the tacksman was not entered thereto; and it being *alleged*, That this tack was personally set to the tacksman, and so could not be transmitted in an assignee, there being no power in the tack to make assignees, the LORDS repelled this alleg-

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No 53.

Liferent  
tacks are  
assignable,  
tho' assignees  
be not ex-  
pressed.

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