

No 2.

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

THE husband being infeft in an annualrent out of lands, he disposes 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 decret 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 pointing, 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 quas 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 decret at her instance upon that assignation; and whatever acquittances the father has thereafter granted, must only be reputed as administrator