

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.