

No 26.

necessary in case of competition of other assignees, and he needed not intimate to Scot, *quia intus habet*, in respect Scot was owing him as much.

THE LORDS found no compensation, unless the suspender had intimate his assignation to the cedent, and so had constitute him his debtor, before the cedent was denuded, by the charger's assignation and intimation. (*See* COMPENSATION and RETENTION.)

*Fol. Dic. v. 1. p. 62. Stair, v. 1. p. 161.*

No 27.

A simple retrocession, without intimation, evacuates an assignation, not intimate.

1674. November 20. CRAIG against EDGAR of Wedderlie.

THE LORDS found, That a bond bearing annualrent, being assigned by a woman to her former husband, by her contract of marriage; and the assignation not being intimate, a retrocession did settle again the right of the said bond in the person of the wife; *quia unumquodque dissolvitur, eo modo quo contrahitur*. And the said bond being thereafter assigned in favours of the second husband, he and his executors had right to the same; and that it was not *in bonis* of the first husband, though the retrocession was not intimate until after his decease.

Reporter, Lord Glendoick.

Clerk, Hay.

*Dirleton, No 195. p. 85.*

\* \* \* The same case is thus reported by Stair :

*Dec. 2. 1674.* WEDDERLIE being debtor to Beatrix Craig in 700 merks by bond, she, by her contract of marriage, assigned the same to John Greenlees, her husband, who, before his death, gave her a general assignation *to all sums of money belonging to him*; she did thereafter transfer the same sum to Mr John Louthian, her second husband in her contract of marriage with him; after whose death she is confirmed executrix to him, and thereupon pursues Wedderlie for payment, who alleged no process, because the right made by her first husband to her, was not intimate in his life; and so the sum remains *in bonis* of the first husband, and she must confirm as executrix to him; for albeit marriage following will stand as an intimation of the husband's right *jure mariti*, which is a legal assignation; that cannot be drawn in consequence to this assignation by a husband to his wife, *stante matrimonio*.—The pursuer answered, That this sum being heritable, did not fall to her first husband *jure mariti*, but was assigned to him by her contract; which assignation was never intimate; so that the right being imperfect, and standing yet in her own person, is not *in bonis* of her first husband; but the assignation to him being an incomplete right, is evacuate by his general assignation to her, which needed no intimation, seeing her assignation made none.

Which allegiance the Lords sustained.

*Fol. Dic. v. 1. p. 63. Stair, v. 2. p. 287.*