*** Spottiswood reports this case:

No 50.

CRANSTON of Moriston being in possession of East-Nisbet's estate, as donatar to his liferent, by moyen of friends obliged himself to pay 2000 merks yearly to John Home of Renton, for the entertainment and aliment of the Lady East-Nisbet and her bairns. Renton having charged him for the Martinmas terms duty 1626, he suspended upon double poinding; *alleging*, That that sum was arrested in his hands by diverse of East-Nisbet's Creditors. Compeared West-Nisbet, and produced a decreet, and alleged he should be answered and obeyed, because it behoved to be reputed the Laird of East-Nisbet's gear, seeing, *stante matrimonio*, the wife and the husband could have no sundry sums. *Answered* by the charger, That the allegeance ought to be repelled, because the sum contained in the said contract could not be arrested by any for a debt owing to them by East-Nisbet elder, seeing it belonged not to him, nor was ordained to be paid to him or any in his name, but allenarly to Renton for the aliment and sustentation of the lady and her children during her husband's lifetime.—THE LORDS found, that the Lady should be preferred to any creditor, and that the said sum could not be arrested for her huband's debt, as had been found before in favour of the Lady Airth.

Spottiswood, (HORNINGS.) *p.* 154.

1630. *March* 3. MURRAY *against* MYLES.

No 51.
An assignee found to have right to proceed in a declarator of redemption, though the cedent died during the dependence of the declarator.

ONE Myles in Dundee being infeft by Coustoun in a tenement in Dundee, under reversion personally to himself allenarly in his own lifetime of 10 shillings; shortly thereafter Coustoun useth an order of redemption against Myles, and intents declarator thereon in his own lifetime, and constitutes Robert Murray assignee to the order and summons; and thereafter, before declarator, he dies; whereupon the assignee, after transferring in him as assignee, pursues declarator; and the defender *alleging*, that the reversion, being personal, was extinct; the LORDS repelled the allegeance, and sustained the declarator pursued by the assignee; for the LORDS found, that albeit the reversion was only personal, yet seeing he, to whom it was granted, had used the order before his decease, and had intented summons of declarator; his dying before the sentence, after the order, made not the order to cease, nor the reversion to be extinct, but that it might be prosecuted lawfully by his assignee, or by his heir, if he had not made an assignee; seeing, by the order, he had declared his will, and thereby had redeemed; and the sentence was only a declarator, finding that the order used by himself was good.

Act. *Russel.* Alt. ——. Clerk, *Gibson.*

Fol. Dic. v. 2. *p.* 75. *Durie, p.* 498.

*** Spottiswood reports this case:

No 51.

1630. *February.*—THOMAS MYLES being infeft in two tenements in Dundee by John Coustoun, under reversion, upon payment of 10 shillings, by John, in his own lifetime allenarly; within two or three months after the disposition, John useth an order of redemption, and intenteth summons of declarator. To which order, and all that followed thereupon, he assigned Robert Murray, one of his creditors, who sought the same to be transferred in his person. *Alleged* by Thomas, The reversion being personal to John alone, who was deceased before declarator of redemption, the order used by him expired by his decease.——THE LORDS found, that John having used an order in his own time, whereby he declared his mind to redeem, he might lawfully assign the same, and his assignee had good interest to seek a declarator upon the said order, as the cedent might have done in his time.

Spottiswood, (REDEMPTION.) *p.* 265.

1631. *June* 18.

CAMPBELL, Prior of Ardchattan *against* The Captain of CLAN-RONALD.

No 52.
A charge to enter heir may be insisted in at the instance of an assignee.
It does not expire at the death of the cedent.

THERE being a decreet-arbitral betwixt the umquhile Prior of Ardchattan, and the umquhile Captain of Clan-Ronald, pronounced by the Judges therein, and the umquhile Prior in his lifetime having charged the eldest son of the umquhile Captain, who was the other party, to enter heir to him; after which charge, the Prior, at whose instance the said charge was executed, having made his son now pursuer, assignee to the said decreet-arbitral, and to the charge given by him to the son of the other party, to enter heir, as said is; the said pursuer, as assignee, pursues the said son, as lawfully charged to enter heir, to make payment to him of the sums contained in the said decreet. And the defender *alleging*, That that charge to enter heir given to him at the instance of the pursuer's father, who is now deceased, cannot be a ground to sustain this process against the defender, at the said pursuer's instance; for the said charge must expire, and become extinct, by the decease of him at whose instance it was given; for it is a personal charge, whereupon nothing followed in the lifetime of him at whose instance it was given, and after his decease cannot be prosecuted by his assignee; but the pursuer, if he would seek any process against him, as representing his father, he ought to charge him *de novo* at his own instance;—this allegeance was repelled, and the LORDS found, that the assignee might insist upon that charge given by the cedent, after the cedent's decease; as an assignee to a summons and action intented by the cedent, may prosecute the same after the cedent's decease. This hath its own scruple, for the assignee cannot always prosecute the act begun by the cedent, after the