

the aliment, and is not an alteration of the species, as when victual is turned into money, and therefore is receivable against the assignee.

No 120.

THE LORDS proceeded only upon the first reason, and found, that if the assignation was gratuitous, compensation is competent against the assignee, though the liquidation was posterior to the intimation, and that the narrative of this assignation betwixt good-brothers, did not prove the cause onerous. See PROOF.

Fol. Dic. v. 1. p. 167. Stair, v. 2. p. 400.

1676. July 4.

ROLLO against BROWNLEY.

JOHN ROLLO as assignee by John Nicol to a bond granted by Alexander Brownley tailor, to Helen Craig, and now belonging to John Nicol her husband *jure mariti*, charges Brownley for payment, and he having presented a bill of suspension, the cause was ordained to be discussed upon the bill. It was *alleged* for Brownley the suspender, *imo*, That the letters ought to be suspended as to the principal sum charged for, because the bond bears annualrent, and so is heritable *quoad fiscum et relictam*, which by the act of Parliament 1661, is extended to the interest of husbands, as well as of relicts, by the Lords' decisions, finding that wives, as they get no benefit by that act, which makes sums bearing annualrent without a clause of infestment to be so far moveable, that they fall within the executry, which before they did not, yet as to the fisk and relict, they are excluded from the benefit of that act, and as to them such sums remain heritable as before; and therefore, as they have no benefit, they have no detriment, so that sums bearing annualrent fall not under the communion of moveable goods with the husband, or under his *jus mariti*.

No 121.
Found in conformity with
No 117. p.
2651. and No
119. p. 2652.

Which the LORDS sustained, and found that the assignee could have only right to the annualrents. See HUSBAND and WIFE.

As to which the suspender *alleged* compensation, because he had obtained assignation to a debt due by Nicol, the charger's cedent, to Alexander Dalglish. The charger *answered, Non relevat*, unless the suspender's assignation had been intimate before the intimation of the charger's assignation.

Which the LORDS did also sustain.

Whereupon the suspender *alleged*, That his intimation, and the charger's intimation, though they be of one day, yet the suspender's intimation bears two of the clock in the afternoon, and the charger's intimation bears no hour, and so can instruct no hour prior to the last hour of the day.

Which the LORDS sustained, but allowed the parties to be heard, if the notary should give a new intimation of the charger's assignation, expressing a prior hour, or should instruct the same by the witnesses insert, whether the same was receivable after production of this assignation.

Fol. Dic. v. 1. p. 166. Stair, v. 2. p. 436.

* * * See No 54. p. 2603. which seems to be the same case by Dirleton, but without names.