

intended that no deduction from the years of prescription should be made, *in minoribus illis servitutibus*; especially seeing the King was superior to both, and so had no prejudice that his

served both his vassals.

*Fountainhall, MS.*

No 76.

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S E C T. XIII.

Effect of Consent.

1623. February 4.

GUILD *against* GUILD.

IN an action pursued by Guild, to hear the right of the sum of 200 merks decerned to pertain to the pursuer, which pursuit was founded upon a testament of the pursuer's father, wherein he assigned to the pursuer the right of that sum which was addebted to him, conform to an obligation made to him thereupon by his debtor, and to the which assignation made by the said testament his wife consented, and the testament was subscribed by her, and she was pursued thereupon; the LORDS found the wife's consent subscribed in the testament could not prejudge her, but that notwithstanding thereof she had right to her own third of the defunct's free gear, and of this sum controverted, amongst the rest of the whole free goods, whereof she was not prejudged by the said assignation, contained in the testament, and consented to by her, seeing that assignation was but of the nature of a legacy, which could go no further than the defunct's own third; likeas they found, That the father's giving in tocher with the pursuer since that testament, a certain sum of money, ought to be ascribed by her, to be given in satisfaction of so much of the defunct's part, or of her own part, as the pursuer acclaimed from the defender, as intromitted with by her *pro tanto*, and that the same ought to liberate the defender *pro tanto* anent her intromission with the defunct's goods and gear.

*Alt. Lawtie.*

Clerk, *Hay.*

*Fol. Dic. v. I. p. 438. Durie, p. 43.*

No 77.

An assignation to a sum in a testament, to which the testator's wife subscribed a consent, found not to prejudice her right of third.

1630. December 15.

STIRLING *against* HER TENANTS.

JEAN STIRLING being provided, by her contract of marriage, to an annual rent out of the lands of Templeland, by her umquhile husband, whereto her umquhile husband's father was a consenter in the contract, after her husband's decease, she pursuing the tenants for pointing of the ground for that annual rent, by virtue of her sasine following upon that contract, and the tenants defending with tacks, set by the umquhile father of her husband; so that they alleged

No 78.

A wife was provided in an annual.