No 9.

an infeftment of an annualrent, will be drawn back to the infeftment, and thereby will be preferred to Bowie the appriser's infeftment, against the common author, being after the infeftment of annualrent, as being a real right and *debitum fundi*. It was *answered*, That the liferenter, by consenting to the last wadset, for all right she had, did thereby pass from her prior annualrent, during the standing of the wadset, so that having died before the wadset was redeemed, her interest is extinct. It was *replied*, That the liferenter's consent did indeed restrict her right as to the wadsetter, but not as to her husband; and if she, or her executor, or assignee, were insisting for poinding of the ground upon her annualrent, she might thereupon adjudge the property, and right of reversion, whereupon they redeeming the wadset, they would possess the whole land, ay and while they were paid, not only of the sum in the wadset, but of her annualrent of 400 merks, during her life, after her husband's death.

Which the LORDS sustained, and therefore declared Bowie's right to the reversion, but with the burden of the liferenter's annualrent, that thereby her assignee might by a poinding of the ground affect the reversion, and thereupon pay the wadset sum, and might possess the land till they were both paid of the wadset sum, and of the wadsetter's annualrent.

Fol. Dic. v. 2. p. 317. Stair, v. 2. p. 669.

1696. *July* 16. LEISHMAN *against* The CHILDREN of NICOL.

No 10.
Where a woman had consented to the sale of her jointure at the entreaty of her second husband, who received the price, she was found entitled to a recompense out of his estate.

HALCRAIG reported Christian Leishman against the children of Harry Nicol writer to the signet, who convened them on this ground; that she being married to their father, and having a jointure of 600 merks, from a former husband, she consented to her second husband's selling the same, whereby she is now prejudged, he being dead, and had left her little or nothing; therefore she having revoked her consent as *donatio inter virum et uxorum*, she ought to have an equivalent liferent secured to her out of her husband's estate. The LORDS found such a revocation could not prejudge the purchaser of her jointure, a singular successor not being concerned therein; but seeing the writ bore, he received the price, they thought it reasonable, that she should be indemnified by an equivalent remuneration out of his estate; for though the natural obligation of gratitude produces no civil coactive effect, yet this being a pure donation, and revoked, both from the principles of the common law and ours, it obliged him and his heirs to remunerate. See 28th June 1675, Arnot *contra* Scot, No 303. p. 6091.; and 22d January 1673, Watson *contra* Bruce, No 344. p. 6129. Yet, on the other hand, she having renounced and judicially ratified, and craved no additional jointure in lieu thereof, it seems not to have been the design or meaning of parties, that she should have any. See VIS ET METUS.

Fol. Dic. v. 2. p. 317. Fountainhall, v. 1. p. 729.