

S E C T. VI.

Moveables accruing to the Wife during Marriage.

1614. *January 8.* LAWSON *against* BANNATYNE.

No 35.

A legacy left to a married woman falls to her husband.

IN an action betwixt Elizabeth Lawson, daughter to Margaret Brown, Lady Humble, and dame Elizabeth Bannatyne, Lady Humble and Ormiston, the LORDS found; that the husband of the said daughter might discharge the legacy left to her in her mother's testament, after her decease, *quia legatum transit in hæredes mero jure*, and he is *dominus omnium bonorum*.

Fol. Dic. v. 1. p. 387. Kerse, MS. fol. 127.

1627. *June 15.* NICOLSON and LYLE *against* LYLE.

No 36.

A bond granted to a wife payable the first term after her father and mother's death, with interest from that term in case the principal sum should not be then paid, was found moveable before the term of payment, and to belong to her husband and his executors, tho' he died before his wife, and before the term of payment.

IN an action at the instance of Robert Nicolson and Lyle his spouse, who was first married upon the Laird of Broxmouth, against one Lyle, son and heir of umquhile ——— Lyle of Stanypeth, his father, for registration of a bond made by his said father to the said Lyle pursuer his sister, obliging him to pay a sum therein contained, at the first term after his father and mother's decease; and from that term to pay annualrent, in case the principal sum were not then paid, ay and while the payment thereof;—the defender compearing and *alleging*, That this pursuer, to whom the said obligation was made, had no right to the said sum, but the same pertained to the executors of the said umquhile L. Broxmouth her first husband, in whose goods the same behoved to be reputed to have remained; and so having right to all sums pertaining to her, the said obligation being granted by the brother to the said pursuer his sister, after that the said pursuer was married with the L. of Broxmouth, and during the time of their marriage;—the LORDS found, that this obligation, and the sum therein contained, pertained to the executors of the L. Broxmouth her first husband, in whose time the same was acquired; and that she nor her second husband had no right thereto, and found the said sum to be a moveable sum, and so to pertain to the executors of the said first husband, albeit the term of payment was conferred to the time of the decease of the mother of the wife, acquirer of the obligation, who survived the L. of Broxmouth, by whose surviving of him, and that the payment was conferred to a time after the mother's decease, and so to a time after Broxmouth's decease, who deceased before her, and that the pursuer had a clause of infefting of her and her heirs in an annualrent, in case

of not payment of the principal sum, at the first term subsequent to her mother's decease, whereby she *alleged* that the bond was heritable, and pertained to her heirs, and could not pertain to the executor of her husband, in whose lifetime the term of payment came not, and who could not have right to the sum, nor prejudice his wife thereof; yet this was repelled, and the Lords found, that it remained moveable, and that the husband might have discharged it, the term not being come so long as he lived, and so pertained to his executors; and hereby the woman wants her right, which pertains to strangers, there being no bairns of the first marriage, which is hard. See January 15th 1628, Falconer *contra* Beatie, No 34. p. 5465, where the contrary is done, and the sum found heritable, and to pertain to the heir.

No 36.

Act. Nicolson.

Alt. Craig.

Clerk, Hay.

Fal. Dic. v. I. p. 387. Durie, p. 296.

1663. January 29. SCOT *against* MR JOHN DICKSON.

Scot, as assignee by her father to a bond, charges Mr John Dickson to make payment. He suspends on this reason, that the assignation being while the charger was wife to Scot her husband, the sum belonged to the husband *jure mariti*; and therefore craves compensation of the like sums, paid to, or for the husband. The charger *answered*, That though the date of the assignation was before her husband's death, yet her father kept the same in his custody, and it was not intimated till after the husband's death, and so the right not being established in the wife's person by intimation, could not accresce to the husband, unless the suspender would instruct that it was intimated before.

THE LORDS found, that seeing the assignation was now in the wife's hands, they would not put the suspender to prove the delivery thereof, during the marriage, but that it was presumed to have been delivered according to the date, and that thereby it became the husband's, *jure mariti*, though no intimation was in his time.

Fal. Dic. v. I. p. 387. Stair, v. I. p. 165.

No 37.

A sum assigned to the wife was found to become the husband's *jure mariti*, tho' not intimated by the wife till after his death.

1709. July 26.

Dame JANET MURRAY LADY PITFIRAN *against* MR ALEXANDER WOOD, Chamberlain to the Earl of Kinnoul.

No 38.

A bond granted to a Lady in lieu of the ordinary compliment of a gown, for

IN the suspension of a charge at the instance of the Lady Pitfirran against Mr Alexander Wood, for payment of L. 1400 contained in a bond granted by him to the charger, for the behoof of the Lady Cultmalundie her daughter, in lieu of the compliment of a gown for renouncing her liferent right in the lands