

in favours of the singular successor ; who, if he came back upon his warrandice-lands, might be repelled by the heritor thereof, who had bought them sinsyne from the Laird of Powrie and herself ; they being truly her conjunct fee lands, and she consenting legally to the alienation. And it may be, that this pretended right of Laulathime, and other lands, did move her to the alienation of her conjunct fee, provided by contract of marriage ; but she did not consider that the same was not *remuneratorie*, neither could be ; the same being long anterior to the alienation of her conjunct fee, and so could not be *intuitu matrimonii*, which is the case sustainable in law. Neither does here militate the distinction *quod maritus non sit pauperior factus, nec uxor locupletior*, which has place by the laws *in minutis tantum et fructibus consumptis*. The Lords found little in it : but, pitying the poor lady, reserved it to be heard *in præsentia*, to the effect some composition might be had by way of arbitrament, since her husband had debauched all, and left nothing to her.

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1649. June 30. MR WILLIAM RIG *against* The EARL of SEAFORTH and ———
WEDDERBURNE, Relict of Thomas Montcur.

IN the action pursued by Mr William Rig against the Earl of Seaforth and ——— Wedderburne, relict of Thomas Montcur, for her interest, it was excepted, against his title of assignation to the Earl his bond, That it was blank even till his death, alleged granter thereof ; and but subscribed on death-bed, *et omnium bonorum*. It was answered, That was *jus tertii*, and neither heir nor creditor did quarrel the same : neither could they or she either ; in respect one Hunter being, as it were, *proxeneta* for getting the said Montcur granter thereof, money to borrow, did deliver the said bond to the pursuer, and promised to bring him an assignation thereto, containing more sums, for some other things that were between them. To the which it was duplied, by way of information, That this Hunter (after bankrupt) might have been debtor to the pursuer, and, in satisfaction, given this blank assignation to him ; which, perhaps, for eschewing of horning or other inconvenient of law, the said Thomas Montcur might have laid by him. Whereupon, for clearing the said Mr William his part, the preceding Lords had taken his oath ; and those who sat now did renew the same.

It was farther excepted, That the said Mr William could not have filled the blank assignation with his own name, to the prejudice of the said relict, to whom the sum was provided in liferent ; and that the said assignation never being intimated before the said Montcur his death, could neither prejudge executor, creditor, nor relict. It was replied, That the bond, being delivered long before the death and assignation promised, the same needed no intimation, except there were another assignee contesting for priority ; and, if the granter subscribed the same *etiam in extremis agens*, it must be thought, as concerning the relict, to be *revocatio donationis inter virum et uxorem, quæ non nisi morte confirmatur, cum et hic mariti voluntas usque ad mortem sit ambulatoria*. And if a bond and assignation be subscribed by the granter, it may be taken, of purpose *et consulto consilio*,

blank in the name to whom, that the receiver may make use of the same at his pleasure, as it is daily practicked.

It seemed here, That the proponer of the defence, Mr Fleiming, being a commissary, would have taken away the right of assignations not intimated, that he might draw all this water to his own mill, of confirming testaments; and, it may be, bishops would have obtained it.

It was lastly excepted, That this sum had been her former husband's and her's; and, after that, she had given the bond to be renewed unto the said Montcur and her for her lifetime, especially seeing it proports a delivery of money for himself and for her behoof. Whereunto it was replied, *Quod hæc omnia nihil operentur*; because, whatever the wife has, by our law, *jure nuptiarum, marito acquiritur*; and she might brought in her lap a great treasure to him, which was no longer her's, but he might have done with it what he liked; so that the giving of the liferent must be yet understood *donatio inter virum et uxorem*; which was revoked by the foresaid assignation. To the which it was duplied, That it could not be revoked *quia remuneratoria*; because, by the contract of marriage with Montcur, he was obliged to provide her to a liferent of a great sum of money; and, because the foresaid contract was in the hands of the heirs of her third husband, she protested for incident diligence. The Lords sustained this duply.

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1649. June 30. ANNA AIKINHEAD and some of Her MOTHER'S FRIENDS, against DAVID AIKINHEAD, Her Half-brother.

IN the action of exhibition by Anna Aikinhead, pupil, and some of her mother's friends, against David Aikinhead, her half-brother, it was excepted, That her tutors disclaimed that action. But, in respect it was replied, That they were the goodsir and other friends of the defender, named in testament by the defunct, the Lords sustained the action.

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1649. June 30. MR JAMES EISTOUNE against BEATOUNE and BROWNE.

IN the suspension by Mr James Eistoune against Beatoune and Browne, the reason for eschewing the failie of not-delivery of so many soldiers, which was the double of the money given, was sustained; because the said Eistoune, principally bound, might have altered his mind, contrary to his bond; since Bruce of Stanehos did not go captain of that expedition, but transferred his right to Browne, who was not so honourable a man to follow as Bruce was. Yet the Lords ordained the money received to be re-delivered; which was enough for a cautioner, to give, to an executor; suppose Beatoune pretended him to have satisfied Colonel Sir James Douglas, to whom he was cautioner for Browne.

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