

self executrix *qua* creditrix, yet as she might have compared in any process against her husband's executor-dative, and craved preference, so may she much more, being executrix-dative herself, propone preference by way of exception.

THE LORDS found, that albeit the bond be null, as subscribed by a wife, and not validated by a judicial oath or ratification, yet they sustained it *in quantum in rem versam*, without the necessity of a distinct process, and allowed such probation as was competent for instructing the true cause thereof, but if it was only by the wife's oath, they reserved to themselves, whether it should be effectual against her husband, or against herself; and found likewise, the allegiance relevant upon the preference of the contract of marriage to this debt, albeit the relict was confirmed executrix creditrix, and gave not up the provision in her contract as a debt, but did give it up as a debt in the inventory. See HUSBAND and WIFE.

*Stair, v. 2. p. 555.*

1678. June 15.

LOTHIANS against LOTHIAN.

ANABEL, Alison, Bessie, and Jane Lothians, pursue a reduction against Katharine Lothian, and Mr Matthew Ramsay her husband, of a disposition granted to them by Charles Lothian, of a tenement in Edinburgh *in lecto*, to the pursuers prejudice, who were heirs portioners to the said Charles their brother, as well as the said Katharine, and so to restrict her to a fifth part of the tenement, that she might have nothing *per preceptionem, et jure precipui*, more than the rest. *Alleged*, They could never quarrel the said disposition as done on death-bed, because the pursuers had homologated the same, in so far as it was offered to be proved, that the pursuers, that same very day, had gotten and accepted from the very same person, their brother, a disposition of another tenement in their favours; which being of one date with the right quarrelled, before the same witnesses, and by the same author, it is equivalent as if they had consented to one another's dispositions. *Answered*, *Non relevat*, seeing the lesion was manifest, her tenement being near as good as that which is disposed among them four. *2do*, They never accepted it, nor are infest on it. *3tio*, If need be, they will renounce it, that it may divide equally *collatione bonorum*. *4to*, The one disposition relates not to the other, nor makes the least mention one of another; and so the one not being conceived as the cause the one of the other, it can never import an homologation. The Lord Newton repelled the allegiance, and found there was no homologation here.

*Fol. Dic. v. 3. p. 271. Fountainball, v. 1. p. 2.*

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It was found no homologation of a death-bed deed, that the party challenging it, had accepted of another deed the same day from the deccast.