

No 7. is conveyed to several strangers jointly, in which case, the common rule of law takes place, *ubi duobus conjunctim disponitur, concursu faciunt partes*. Now, this holds more in the case of moveables, which by their nature more easily receive division than lands, and is consonant to the decision, February 2. 1632, Bartilmo *contra* Hassington, No 20. p. 4222.

THE LORDS found, That the husband hath right to the fee of the whole, and the wife to the liferent of the whole.

Fol. Dic. v. 1. p. 297. Forbes, p. 708.

1727. June.

EDGAR *against* EDGAR.

No 8.

A WIFE, during her marriage, having succeeded to some tenements and lands, did gratuitously dispoise them to herself and husband in conjunct-fee, and to the heirs and bairns of the marriage, which failing, to the husband's other heirs and assignees whatsoever. Notwithstanding this was a disposition without any onerous cause, the LORDS found the fee in the husband. *See APPENDIX.*

Fol. Dic. v. 1. p. 298.

1739. June 22.

FERGUSSON *against* M^rGEORGE.

No 9.

A BOND bore the sum of 1000 merks, to be received from the husband and wife, obliging the debtor 'to repay the same to the husband and wife, and 'longest liver of them two, their heirs, executors, or assignees.' The marriage having dissolved by the predecease of the husband without children, the question occurred betwixt the relict and the husband's children of another marriage, which of them was fiar? *Pleaded* for the Children, That the husband was undoubtedly fiar, and in *dubio* the fiar's heirs must be understood to be called. *Answered, imo, Esto* the husband had been fiar, the wife succeeded upon her survivance, and then her heirs are understood to be called, as being the heirs of the fiar. *2do*, The meaning of the clause is the same as if the bond had borne, 'and to the heirs of the longest liver.' THE LORDS preferred the relict, and found that the bond belonged to her as longest liver. *See APPENDIX.*

Fol. Dic. v. 1. p. 298.

* * * Kilkerran reports the same case :

WHERE a bond bore the sum to have been received from husband and wife, and was taken to the man and his wife, and the longest liver of them two, 'their heirs, executors, and assignees,' the marriage dissolving by the predecease of the husband without children, the sum was found 'to belong absolutely to the wife as longest liver;' several of the Lords dissenting, who were of opinion, that it resolved into a liferent only to the wife, agreeable to the ex-

press opinion of Craig, *L. 2. Dieg. 22.* and that the construction put upon that opinion of Craig's, that it referred only to proper feus and not to money, was without foundation, his reasoning in that passage applying to the one as well as to the other.

There was no doubt but the husband was so far fiar, as not only to have the disposal of the money during his life, but that it was also affectable by his creditors. But the question turned upon this, Whether by the words, *their heirs*, were only understood the heirs of the marriage, who alone could be properly called *their heirs*, and that the further substitution of the husband had *per errorem* been neglected, as Craig *dicto loco*; or if the natural force of the words, *their heirs*, in this case, was the same as if the bond had borne, and to the *heirs* of the longest liver? Which last prevailed as above.

Kilkerran, (FIAR.) No 1. p. 189.

1747. November 6.

RIDDELS against SCOTT.

IN the year 1717, Walter Scott of Whitefield, now of Harden, granted bond, bearing him to have borrowed 1200 merks from John Nisbet, writer to the signet, and Agnes Riddel his spouse, and obliging him to repay the same against Whitsunday then next, to the said John Nisbet and Agnes Riddel spouses, and longest liver of them, in conjunct-fee and liferent, their heirs, executors, and assignees; but declaring, that notwithstanding the said conception of the fee of the principal sum, it should still be in the power of the said John Nisbet, and his spouse, to dispose thereof as follows, viz. the fee of 500 merks to be at the disposal of John Nisbet, and the other 700 merks at the disposal of Agnes Riddel, but that it should be noways in the power of John Nisbet to assign or discharge the premises, without the consent of Agnes Riddel.

Agnes, the wife, having survived John the husband, Christian and Jean Nisbets, her executors, brought an action against Harden, for payment of the 1200 merks, with the annualrent thereof resting. His defence was compensation by two bonds, granted by John Nisbet the husband, one for 500 merks, and the other for 200 merks, to both which Harden had obtained assignation after the death of John Nisbet the husband.

So far as related to the 500 merks, the compensation was admitted, as it was plain, that the husband was, by the conception of the bond, to that extent, fiar, to take effect from the wife's death; and higher it could not be pleaded, as the wife, by the conception of the bond, was liferentrix of the whole: But the point disputed was, Whether or not compensation was to be admitted upon the bond for 200 merks, which the pursuers objected to upon this ground, that by the conception of the bond the fee of the 700 merks was in the wife.

But as that general point could not be determined as between the pursuers and the debtor, further than to the effect of sustaining or repelling the compensation, and that in the mean time the heir of the husband appeared for his

No 9.

No 10.

A bond was granted to a man and his wife, and longest liver, in conjunct-fee and liferent. Each was to have power to dispose of a certain proportion of the sum. The husband was not to be entitled to discharge or assign without consent of his wife. Notwithstanding, the debtor was permitted to plead compensation against debts of the husband to him, exceeding the husband's own proportion.