

1662. *January.* The RELICT of Dalgleish *against* The DEBTORS of her Husband.

No 340.

A life-rent provision to a wife, not otherwise provided, granted *stante matrimonio*, not revocable, if suitable to the circumstances of the party.

THE Laird of Logie gives a bond to umquhile Walter Dalgleish, and Margaret Home his spouse in life-rent, and to their two daughters in fee, for a sum of money; whereupon there is a comprising deduced in favours of the spouse in life-rent, and the two daughters in fee, and they infeft. Thereafter, the said Walter disposes the said lands to certain of his creditors, who are infeft, and in possession; the said Margaret Home, upon her life-rent right and infeftment, pursues for mails and duties. It was *excepted*, that the pursuer's right is *donatio inter virum et uxorem*, revoked by the posterior disposition made to the defenders. It was *answered*, That the defunct's own right was but a life-rent, the fee being in the person of the daughters; which fee, as the father could not revoke, nor could it be any ways quarrelled by the defenders, their right being long posterior thereto, no more could they quarrel the pursuer's life-rent, which being but a mean and necessary provision for her aliment, she not being otherwise provided by contract of marriage, it is not such a right, as could be revocable by any second disposition granted to the defenders, to whom the fee and property of the lands were disposed, without mentioning or reserving her life-rent.

THE LORDS repelled the allegiance in respect of the answer.

Fol. Dic. v. 1. p. 411. Gilmour, No 21. p. 17.

. In conformity with the above was decided Carmichael against Corsar, No 88. p. 5610.

No 341.

Donation by a man to his wife, where there was no contract of marriage, was found revocable only in so far as it exceeded a suitable provision. See No 342. p. 6126.

1677. *June 27.*

SHORT and BIRNIE *against* MURRAY.

THE deceased James Short having married Anna Murray, daughter to Polmaise, without her father's consent, and without tocher or contract-matrimonial, he did, during the marriage, dispose to her in fee, a security for 10,000 m rks due to him by Tillibardin and Marr, 'reserving his mother's life-rent and his own'; he did also provide a tenement and twenty acres of land at Stirling, which was life-rented by his mother, to himself and the said Anna, and their heirs; which failing, the heirs of his body, which failing, — Brown his sister's daughter; but thereafter on death-bed, he disposed the fee of the 10,000 merks to — Scot his mother, and expressly revoked the former disposition to his wife as to the fee; his mother disposes her right to her oyes, her son's nieces Sir Andrew Birnie's daughters. Anna Murray being now dead, Sir Andrew's daughters pursue reduction of the disposition granted by their uncle to his wife of the security of 10,000 merks, so far as concerns the fee, on this reason, that it was a donation betwixt man and wife revocable, and revoked expressly by