

No 96.

1676. December 15.

INGLIS against LAURY.

AN assignation of an heritable bond by a wife to her husband, *stante matrimonio*, was found revocable, as *donatio inter virum et uxorem*, and that even against a singular successor, acquiring *bona fide* from the husband for onerous causes.

*Fol. Dic. v. 2. p. 70. Stair.*

\* \* \* This case is No 345. p. 6131. *voce* HUSBAND and WIFE.

No 97.

A donation by a wife to her husband, taken in name of a trustee, found revocable even against singular successors.

1677. July 17.

PATERSON against M'LEAN.

MARGARET PATERSON, by her contract with her first husband, being provided to six hundred merks yearly, she, with consent of her second husband, assigns her liferent right to Thomas M'Kenzie, who transfers the same to Sir George M'Kenzie advocate, who grants a back-bond, bearing, 'That his translation was for procuring payment to the wife and her husband of the liferent, except as to some debts due to the husband himself, and therefore obliges him to denude in favours of the husband, or any he would appoint.' The husband assigns the bond to Charles M'Lean, for security of a sum due by the husband to M'Lean, who thereupon pursues Sir George M'Kenzie to denude. The husband being dead, the wife pursues a reduction of this assignation, as being a donation by a wife in favours of her husband, which is null *nisi morte confirmetur*, and therefore is revocable at any time, during the life of the married person granter thereof, whether before, or after the death of the other. The defender *alleged*, That this reason is not relevant; *imo*, Because this is no assignation by the wife to the husband, but by both wife and husband to Thomas M'Kenzie, bearing, 'for causes onerous;' and it is beyond question, that a wife may not only dispoise for causes onerous, but may gift her liferent right, in favours of a third party, without prejudice to the husband's *jus mariti* during the marriage; and if the husband consent, it imports his right by his *jus mariti*: And it is also unquestionable, that if the right be once so validly constituted, the assignee may transfer it to whom he will, even to the husband *qui utitur jure auctoris*; so that the wife can no more revoke it as to her husband, than as to a cedent. *2do*, Albeit the right were revocable, though not made to the husband, but to a third person for his behoof; yet if the husband or his trustee do transmit that right to a third party, for an onerous cause acquiring *bona fide*, the favour of commerce hath by positive law introduced, that the acquirer is secure, and the wife's power of revocation is not *vitium reale*, like theft or force affecting the matter *contra singulares successores*; for even fraud reaches not singular successors, *nisi participes fraudis*: So that M'Lean having gotten right to Sir George