

be taken away by any posterior right granted by a father to his daughter who was not a true and lawful creditor, their provisions being ambulatory and revokeable by the father during lifetime. It was *answered* for the said Janet, the daughter, That notwithstanding she ought to be preferred to the two last infestments granted to the relict Jean Rait, because her first infestment being given in full satisfaction of her contract of marriage, the subsequent infestments were only donations *inter virum et uxorem*, and so were revokeable by the husband, and *de facto* revoked by the right made to his daughter; and albeit he was not obliged to grant the same, yet it being *debitum naturæ*, and perfected and made public by infestment, it is always preferable and ought to be sustained as a revocation of any voluntary deed by the father, which depends not upon any contract of marriage. THE LORDS did prefer the daughter to the relict as to her last two infestments, seeing they could only be interpreted to be for love and favour, and were not for implement of her contract of marriage, or granted as a remuneration for any supervenient advantage that did accresce to the husband by the wife, and therefore the daughter's right, though posterior, being perfect and public, and such as could not be reversed or questioned, but at the instance of prior creditors of the father's, it ought to be preferred to the relict's right which was revokeable in law, and done by this right made to the daughter, which they did interpret to be a sufficient ground thereof.

Gosford, MS. No. 723. p. 438.

1679. *January 29.*

AIKMAN *against* The HEIRS and SUCCESSORS of David Boyd.

JOHN AIKMAN pursues the successors of David Boyd, who was his tutor, to compt, and charges them with the sums contained in an assignation granted by his father to the pursuer, and also for the equal half of the defunct's other goods and sums belonging to the pursuer, as one of the two executors and universal legatars by his father's testament. The defenders *alleged*, That the pursuer had no right to the sums assigned, because the defunct granted two assignations, one to the pursuer, and another to his daughter, and both were on deathbed, and so were in effect but legacies; and the defunct, by his testament, having named his son and daughter his executors and universal legatars, without reservation of the prior assignations, the last in testaments and legacies excludes all former. *2do*, These assignations bear expressly clauses, "Reserving to the defunct to uplift the sums and dispose thereof at his pleasure;" so that thereafter having made an universal legacy, which is a disposal of all his moveable rights, the assignations granted by him with that reservation are thereby void. It was *answered*, That an universal legacy, without any particular goods or sums given upon testament, or any mention of the sums formerly assigned, can only be extended to the moveables over and above the two as-

No 100
An universal legacy found not to derogate from prior assignations on deathbed.

No 10. signations, which assignations are deeds *inter vivos*, although being done on deathbed, they cannot prejudice the heir, the relict's-part or bairn's-part, and in so far are accounted as legacies affecting dead's part, yet they are not ambulatory as legacies at the defunct's pleasure; but if they had been delivered, though on deathbed, he could not recall them, and they would be preferable to any legacy; but in respect of the reservation or not delivery, the defunct might have otherways disposed thereof, but he hath not done it by his universal legacy, it being merely general, and having moveables besides both assignations.

THE LORDS found the assignations effectual and not derogate from by the universal legacy, seeing there were moveable goods and sums besides both assignations.

Fol. Dic. v. 2. p. 134. Stair, v. 2. p. 684.

* * * Fountainhall's report of this case is No 21. p. 3201. *voce* DEATHBED.

No 11.

1680. November 12.

STEVENSON against Sir JOHN PAUL.

THE LORDS found, where a wife is provided to the half of the moveables, this does not seclude the husband's heir from drawing his heirship even out of her half; but this was only carried by the President's vote.

Fol. Dic. v. 2. p. 133. Fountainhall, MS.

* * * Stair's report of this case is No 33. p. 5405. *voce* HEIRSHIP MOVEABLES.

1681. December 1.

CREDITORS of Lord COUPAR against His RELICT.

No 12.

THE Lord Coupar having, after contracting of debt, granted an additional provision to his Lady *stante matrimonio*, who was opulently provided before; and having afterwards contracted more debt, the anterior creditors questioned the provision on the act of Parliament 1621; and the posterior creditor *alleged* it was indirectly revoked by the posterior contracting of debt.

Answered; My Lord had a sufficient estate to pay all his debt, and so the provision could neither be quarrelled on the act 1621, nor could it be presumed revoked.

THE LORDS found the answer relevant. See No 5. p. 11337.

Fol. Dic. v. 2. p. 133. Harcarse, (STANTE MATRIMONIO.) No 868. p. 246.