

1679. February 21. COCKBURN against BURN.

ALEXANDER COCKBURN having pursued George Burn for exhibition of a bond granted by the Laird of Cockburn to umquhile Christian Burn, while she was wife to the pursuer, and which she had assigned to George Burn her brother, the said bond and assignation being exhibited, the said Alexander craves the same to be delivered to him, and to be declared his right, the sum being lent out by his wife, and which the law presumes to be his means.—The defender *alleged* the foresaid presumption is taken off, wherever the wife has a separate estate, *extra communionem bonorum*; and, it is offered to be proved, that this wife had belonging to her a bond, bearing annualrent, whereof the term of payment was come before her marriage with Alexander Cockburn, and that she lifted the sum, and had lent it out again to the Laird of Cockburn.—It was *replied*, That noways granting the defence, *non relevat*, because the bond due to the wife before the marriage becoming moveable, either by a charge at the wife's instance, or by payment or consignment by the debtor, the same thereby became moveable, and did belong to the husband *jure mariti*.—It was *duplied*, That the heritable rights of wives being excluded from the *jus mariti*, cannot fall thereinto by their recovering or changing thereof, unless it were done by an act of the wife, importing her changing it from an heritable to a moveable right, as if the wife retained the money, and re-employed it not, or took a bond simply moveable without annualrent therefor; but either a charge, or the taking in of the money, and re-employing it heritably, cannot make it fall to the husband, or else the heritable rights of wives behaved to be ineffectual, and they could neither use diligence for them, nor make use of them.

THE LORDS found it relevant that the wife had an heritable bond, whereof the term was come before her marriage, and found that her lifting thereof, or changing thereof, being again re-employed heritably, did not make it fall to her husband as moveable, but he had only right to the annualrent thereof during the marriage.

Fol. Dic. v. 1. p. 386. Stair, v. 2. p. 701.

* * See Fountainhall's report of this case, No 32. p. 5795.

1687. December 17. JANET STUART against GILLIES.

FOUND that a wife having *stante matrimonio* got right to a bond bearing annualrent, the uplifting of the money to re-employ it in her own name, did not make it fall under the husband's *jus mariti*.

Fol. Dic. v. 1. p. 386. Harcarse, (STANTE MATRIMONIO.) No 886. p. 252.

No 29.
Found in conformity with the above.

No 30.