

*non operantur ultra eorum intentionem.* But here the suspender's design was not to discharge the back-bond; but only to borrow money for supplying his present necessity; and to repay, if Mr. Fead's occasions should peremptorily call for it, before recovering payment of Ewing's bill: whereas, at the same time, Mr. Ewart knew that Fead's obligation to hold count was still effectual to him, either for pursuing payment of the sum therein-contained, or to compensate the bond charged upon. Nor is it of any moment, that Ewart granted the bond for borrowed money after the date of Fead's back-bond; for, in every compensation almost, the one debt is contracted before the other: and a charge upon a bond granted to one who was debtor to the granter by a former bond, hinders not the debtor in the last bond, either to compensate or charge for payment upon the first, as he thinks fit.

The Lords having considered Ewart's letters, find that Mr. Fead acted warrantably in remitting the money; Ewing being held and reputed in good condition, and solvent, the time of the draught; and, therefore, repelled the compensation.

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1705. *July 14.* NICOL SOMERVELL, Writer in Edinburgh, *against* JOHN DUNDAS, Advocate, and NINIAN ANDERSON, Merchant in Edinburgh.

MARGARET ABERCROMBIE, having disposed her whole estate to Nicol Somervell, her husband; and delivered, on her death-bed, L.100 Scots to a trustee, to be given to Mr. John Dundas, and Ninian Anderson, which they received the day after her decease: Nicol, the husband, pursued the legatars for repetition of the money, upon this ground, that what was lying by his wife, belonged to him *jure mariti*, and could not be disposed of without his consent.

ANSWERED.—Margaret Abercrombie, the testatrix, leaving a considerable estate to the pursuer, in bonds bearing annual-rent, which fell not under the *jus mariti*, she might have burdened the same with legacies at her pleasure, which he would have found himself obliged to make effectual; and, therefore, he cannot repeat so small a compliment, actually delivered to the defenders by the defunct's order.

The Lords' assoilyied the defenders, and found them not liable to refund the L. 100.

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1705. *July 20.* ALEXANDER ALISON, *Supplicant.*

ALEXANDER ALISON, writer to the signet, as tacksman of the estate of Halkertoun, set to him by the Lords of Session, being put to for the proportion imposed upon that estate, for repairing the parish church that was ruinous,—applied by a bill to the Lords for a warrant to pay,—Craving, they would declare either

that the payment should be allowed in his tack-duty, or that the falling of the church, through want of reparation, should not be imputed to his neglect.

But the Lords refused to interpose their authority.

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1705. *July 25.* WILLIAM HAMILTON of Grange-Brech, and MARGARET BOSWAL, his Spouse, *against* Cornet GEORGE BOSWAL.

MARGARET BOSWAL, daughter to Cornet George Boswal, having a proper estate, which came by the mother, and friends on the mother's side,—as 4000 merks upon Vicars-Grange, 2000 merks due by Kininmonth, and thirteen acres of land, with a lodging, orchard, and other houses, in and about Kinghorn: her father and his two brethren had a long intromission with her whole estate. William Hamilton of Grange married her with the father's consent; and neither he nor she knowing any thing of her fortune, they both yielded to the father's terms,—giving to him, and accepting from him, whatever he was pleased to propose. The Cornet contracted with his daughter 6000 merks of tocher, reserving his own liferent of 2000 thereof; and, for this portion, he made his daughter, with consent of her future spouse, and him, as taking burden for her, discharge himself and his brother Balmuto of their curator-accounts; and, at the same time, took a separate obligation from them, to dispoise to him, upon the day after their marriage, the thirteen acres of land, with the lodging, orchard, and other tenements above mentioned, under the pain of 12000 merks, by and attour performance:—and, accordingly, such a disposition was granted by Grange and his spouse, the very next morning after their marriage. They coming afterward to understand what a gross abuse had been put upon them, raised reduction of the contract, bond, and disposition, upon the grounds of minority, lesion, and circumvention. Wherein the Lords, 19th December, 1701, sustained the reason of lesion, in behalf of Grange's lady, who was minor; but found that the husband, being major, and not having proven concussion or circumvention, could not be reponed against the deeds subscribed by him, before and after the marriage.

For proving the lesion, a count and reckoning was appointed, wherein it was ALLEGED by the defender, that his daughter, the pursuer, could not charge him with the rents of her lands, and annual-rent of her money preceding the marriage, because they fell under the husband's *jus mariti*; and, by the contract of marriage, and disposition after the marriage, he had dispoised the same to the defender.

The Lords found all must come *in computo* to make up the lesion, but decerned the Cornet to pay only the principal sums; and assoilyed him from counting for annual-rents of sums, or rents of lands, due before the marriage, as falling under the *jus mariti* of William Hamilton, who discharged the same, and is not restored against the discharge.—[See 22d Nov. 1705; next page.]

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AFFIRMED on Appeal.—*Vide* Robertson's Appeal Cases, p. 346.