

the sum would amount to, and was content to renounce in favour of the pursuer, all the right he had to his wife's goods *jure mariti*, or otherwise; but also to make furthcoming whatever means he got with her, for the charger's use; as also the ground in law upon which the husband is liable for the wife's debt, is only because by the marriage there is a communion; and therefore law infers that there should be a communion of debts. And seeing bonds granted by the wife before the marriage bearing annualrent, being heritable, do not fall under the *jus mariti*, nor the communion of goods; so neither should bonds granted by the wife before the marriage, bearing annualrent, fall under the communion of debts; so that, seeing the bond bears annualrent, the husband cannot be liable for the same, but at most for the bygone annualrent.—*Answered*, That albeit he was only convened *pro interesse* as husband, yet the husband is always liable for the wife's debts, especially seeing the marriage is still subsisting; for the husband and wife being *eadem persona* in law, he is as well liable for the wife's debts as she is herself; and execution for the wife's debt must take effect against the husband and his goods during the subsistence of the marriage, he being the head of the wife, and *dominus bonorum*. And however a creditor of the wife's should recover a debt against the husband for his interest, yet if no execution follow thereupon before the wife's decease, he will not be farther liable, nor can the creditors use any farther execution against him, seeing his interest ceases by decease of the wife; but if the marriage be still subsisting, and the wife alive, he is liable for her debt whether he be *lucratus* by the marriage or not.—THE LORDS repelled the defence, and found the husband liable for the debt,

Fol. Dic. v. 1. p. 390. Sir P. Home, M.S. v. 1. No 302.

* * * Harcarse reports the same case :

ONE found liable *jure mariti* for his wife's debt, contracted before her marriage, though he had no benefit or tocher by her.

Harcarse, (SUMMONS.) No 905. p. 255.

1708. January 23. LESLIE against WALLACE.

MARY WALLACE having been bred at Mr Aitken's school, and being debtor for her education and board-wages in L. 166 Scots, and her parents being unable, Mr Alexander Leslie pays it, and takes her bond, whereto her father is consentor for that sum. She being now married to Richard Howison, and charged on her bond, she suspends on these reasons, *imo*, That she is *vestita viro*, and so cannot be personally liable *stante matrimonio*.—*Answered*, He craved a decret to have effect against her on the dissolution of the marriage; which the Lords granted. *2do*, This being a bond bearing annualrent, the husband can

No 64.

without regard whether any thing came by the wife or not. See No 68. P. 5855.

No 65.

The husband found liable for his wife's heritable debt, contracted before the marriage, in *quantum lucratus*; but in regard he had not present access to the *lucrum*, the

No 65.
tocher being
liferented by
another, the
Lords ordain-
ed him and
his wife to
assign to the
creditor as
much there-
of, to take ef-
fect when
their right
should com-
mence by the
liferenter's
death.

never be liable for the principal sum, because his *jus mariti* gives him right only to his wife's moveable sums, and so *a pari*, he can only be liable for her moveable debts, for *quem sequitur commodum, eundem debet sequi incommodum*, and no farther; as has been oft decided, betwixt Menzies and Osburn, No 23. p. 5785; Captain Gordon and Cesnock, No 24. p. 5787. and many others.—*Answered*, Whatever be in that principle, it only takes place where the husband is not *lucratus* by the marriage; but here the husband gets 5000 merks of tocher.—*Answered*, This comes not by the father, but is a *peculium adventitium*, gifted to her by her grandfather, and affords no present benefit, being liferented by the mother.—THE LORDS found the husband liable *in quantum lucratus*; but in regard he had not present access thereto, they ordained him and his wife to assign him to as much of that sum, to take effect when their right commences by the mother's death. The third reason of suspension was, that she was minor the time of subscribing the bond, and lesed; for though it bore an onerous cause of her education at schools, yet this is not probative; for there is nothing more easy than to insert a specious narrative of onerous causes in minor's bonds; and here, being *in familia* with her father, he must be liable, and by his consenting could not be *auctor in rem suam*.—*Answered*, The testificate of her baptism is no authentic proof, and the presbyterian parents did then keep their children long unbaptized, till they got a minister of their own persuasion to do it. Next, if she be so ungrateful as to deny his paying the money, and relieving her, and the onerous cause, he will prove her staying at that school, providing it be *cum onere expensarum*.—THE LORDS repelled the minority, the cause of the bond being first instructed and adminiculated to have been *in rem versum*, and for her board-wages.

Fol. Dic. v. 1. p. 390. Fountainhall, v. 2. p. 422.

No 66.

1708. July 13.

GORDON against DAVIDSON.

THE husband is liable for annualrent of heritable debts contracted by the wife prior to the marriage, and falling due during the marriage.

Fol. Dic. v. 1. p. 390. Forbes. Fountainhall.

*** See this case, No 25. p. 5789.

1714. January 22.

LOCKHART of Carnwath against EUPHAN DUNDAS, and Mr JOHN DUNDAS of Philpstoun, Advocate, Her Husband.

No 67.
The husband
found not
lucratus by
getting a
competent

GEORGE LOCKHART of Carnwath, in January 1693, obtained a decret against Catharine Swinton, daughter and heir to George Swinton of Chesters, and