

No. 5. right thereto, and his right being a personal disposition, that the same was thereby conveyed.

*Dalrymple, No. 8. p. 11.*

\* \* \* Fountainhall reports this case :

In a competition betwixt Grissel Muir, relict of John Brand, baxter in Canon-gate, and Margaret Fullerton, relict of James Brand, his son, Grissel had a disposition from her husband, assigning her to the mails and duties of a tenement in the Canongate, belonging to the said John, the father, but contained neither procuratory nor precept of sasine to complete it, or any way to make it a real right; therefore she charges her husband's grandchild to enter heir, and thereon adjudges the right of a disposition her husband had thereto, containing a precept of sasine, but whereon she was never infest; but she does now infest herself on that precept by the new act of Parliament. The right of Fullerton, the other relict, was also an adjudication of the same land, founded on debts due by the said John, and his son James, her husband, whereunto she had acquired right, and charged the Magistrates, as superiors, to infest her; upon which legal diligence, she craved preference, and objected, that Grissel Muir's adjudication was informal, seeing her assignation could not be a title to adjudge, till a previous sentence had been obtained, finding the warrandice incurred; which method was not followed. Answered, The assignation to the mails and duties during her life must necessarily imply a conveyance of all the right that was in his person at the time, as effectually as if it had been validly disposed to her; *nam concessio jure omnia conceduntur, sine quibus explicari non potest*, and the heir might be summarily charged to complete it without a decree constituting the warrandice; and so it had been decided, 2d July, 1667, Sinclair *contra* Couper, recorded both by Stair and Dirleton, No. 4. p. 16464. The Lords found, That Muir's adjudication carried all the right that was in her husband's person, and consequently his disposition, which she having completed by infestment, it gave her preference to the other adjudger, though prior.

*Fountainhall, v. 1. p. 30.*

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1710. November 30.

CHARLES M'KIE of Southfield, *against* JOHN PATON, Merchant in Edinburgh.

No. 6.

A provision, that one should not quarrel or reduce a right, but consent to and ratify

Agnes Paton, relict of Archibald Paton, merchant in Edinburgh, disposed and assigned a bond of £.1000 granted to her by the Lairds of Clackmannan and Kennet, in favours of Margaret Paton, her daughter, with this provision: "In case William Paton, late Bailie of Edinburgh, my son, shall question, quarrel, or reduce this right, then I assign her in lieu thereof to £.1000 resting by him

to me, which I discharge him of, in case of his not quarrelling, questioning, or reducing the said right, but consenting to and ratifying the same." The Lords found, That William Paton, by the foresaid clause, was bound not only to consent to and ratify Agnes Scot's disposition to Margaret Paton, her daughter, but also to assign and dispoise the debt in favours of the said Margaret Paton.

*Forbes, p. 445.*

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found to im-  
port, that he  
should assign  
and dispoise  
that right.

1715. June 11.

JOHN FARQUHAR *against* MR. JAMES and ALEXANDER HUNTERS.

The deceased Alexander Hunter in Layhead, by contract of marriage with Margaret Farquhar, his spouse, having provided her to the half of the free goods and gear that should pertain to him at his death, (in case of no children), and he having both heritable bonds and other sums bearing annual-rent, and particularly there being a debt heritably secured upon the estate of Auchinhove, he disposed the same to Messrs. James and Alexander Hunters, but reserved a power to himself to alter; and Sir Robert Forbes having purchased the lands of Auchinhove, and thereafter made over his rights to Mr. James Fergusson, the creditor transacted the debt, and received a simple bond from Mr. James Fergusson, which bond he thus indorsed on the back with his own hand, "I desire you may transact the inclosed bond to the bearer, Mr. James Hunter, in his own name, for he has given me his receipt and obligation to pay to me the annual-rent and the principal when I seek it, after ye have paid him," &c. and at the same time delivered the bond to Mr. James Hunter. The question then being, Whether, by the conception of the contract of marriage, mentioning only goods and gear, the wife was excluded from any share of debts and sums of money? as also, Whether the new bond by Mr. Fergusson, though coming in place of an heritable subject, did become moveable, and so fall under the communion? it was alleged for the relict, and John Farquhar, her assignee, the pursuer,

No. 7.  
Effect of  
these words,  
"I desire you  
may transact  
the inclosed  
bond with the  
bearer in his  
own name."

*1mo*, That though the said bond came in place of an heritable subject, yet the husband having, by acceptation thereof, declared his intention that it should be moveable, and fall under the communion, he could not thereafter alter his intention to the prejudice of the relict, and evacuate the said clause of the contract of marriage; *2do*, That the transmission was not habile, as being by way of indorsation, which although allowed in bills of exchange, yet that is not the stile or method of transmission of bonds; *3tio*, That the indorsation as it stood was null, wanting writer's name and witnesses.

Answered for Hunters, the defenders: *1mo*, That as the relict could have no claim to the debt, while it stood heritably secured, so it is certain, that if the husband, at the time of the said transaction, would have taken the said bond in