

No 72. 1768. January 29. BANNATYNE *against* CLERK.

ALTHOUGH a husband is liable for the debts contracted by his wife before marriage, yet they must be her own proper debts. If, therefore, contracted for cloaths while *in familia* of her father, and at an age when he is bound to aliment her, the husband is under no obligation to pay them. See APPENDIX.

*Fol. Dic. v. 3. p. 281.*

1785. November 17.

ALEXANDER NAIRN *against* COLONEL WILLIAM MERCER.

No 73.

A debt contracted for the benefit of the separate estate of a married woman, though of such a nature that the husband was bound to discharge it, is still effectual against her heirs in that estate.

COLONEL MERCER'S predecessor in his estate, a married woman, granted a bond, along with her husband, for a sum of money borrowed in order to pay off the annualrents which had arisen during the marriage, of a debt that was a burden on the lands; and in this bond Mr Nairn concurred as cautioner. The whole parties afterwards joined in a second bond for an equal sum, which was to be applied for the discharge of the first; and again in a third bond, for the purpose of extinguishing the second. No assignation, it may be remarked, from the original creditor on the estate, had been obtained. The debt was ultimately paid by the cautioner; who having sued Colonel Mercer, the heir, for his relief, the latter

*Pleaded,* No valid personal obligation can be laid on a woman *vestita viro*; and as to the effect of a debt respecting the separate estate of a wife, it belongs not to the present case. The original debt, which was a burden on the succession, ceased when the first of the bonds was granted, no assignation having been made, by which only it could have been continued. In these bonds the husband was the proper debtor. He drew the rents of the estate; and if he employed them for extinguishing his own peculiar debts, or in any other way than in paying the interest due during the marriage on those of his wife, he must still remain indebted to that amount.

*Answered,* This claim is not made in virtue of the wife's personal obligation, except so far as by her bond she certifies the use to which the money was applied, that of clearing away a burden on her separate property. On this account there could be no necessity for an assignation to the original creditor's right, since that was nothing different from the rights of any of the creditors in the bonds, which were all equally burdens on an estate for the benefit of which the money borrowed had been employed. It is true, the husband was bound to relieve the wife, and so, as to her, was the proper debtor; but this does not save her at the hands of creditors.

The cause was reported by the Lord Ordinary ; when the LORDS repelled the defence.

No 73.

A reclaiming petition against this judgment was refused without answers.

Reporter, *Lord Grange.* Act. *Solicitor-General Blair.* Alt. *C. Hay.* Clerk, *Colquhoun.*  
S. *Fol. Dic. v. 3. p. 281.* *Fac. Col. No 232. p. 360.*

## SECT. II.

Effect of the Dissolution of the Marriage, as to the Wife's  
Moveable Debts.

1612. *June 23.*KILLOCH *against* The EXECUTORS of the Sheriff of Murray.

No 74.

ANE decret obtained against an heir portioner and her husband for his interest, will not have execution against the husband or his executors, if he was divorced frae his wife in his lifetime, because the divorcement makes separation, and makes the wife's debts to follow herself, specially if the divorcement was deduced in default of the wife.

*Fol. Dic. v. 1. p. 390.* *Haddington, MS. No 2463.*

1623. *February 27.*DOUGLAS *against* STIRLING.

No 75.

JAMES DOUGLAS of Glaspen being married to Isobell Moffat, relict of James Stirling advocate, and the said Isobell being charged for her debt contracted before Glaspen's marriage, and he charged for his interest, and they both denounced, and the husband warded ; his wife deceasing, he summons the denouncers to see him put to liberty, since his interest was extinct by his wife's death ; which desire the LORDS thought reasonable. Thereafter it was *alleged*, That he was arrested by the said umquhile James Stirling's bairns, upon a decret for debt, wherein he was principal, and for an act of cautionry.—I *alleged*, That as a man could not be warded, not being at the horn, so he could not be arrested and retained in ward, unless he were rebel.

A husband, after his wife's death, cannot be imprisoned for debt contracted before the marriage ; and if he be imprisoned before her death, he will be set at liberty.

*Fol. Dic. v. 1. p. 391.* *Haddington, MS. v. 2. No 2788.*