

1676. July 5.

A. against B.

No 168.

A BOND granted by a woman *stante matrimonio*, for payment of a sum of money, being ratified judically; it was found, that the ratification did not bind her, being of a deed null in law, though it was judicial, being likewise *stante matrimonio*.

Fol. Dic. v. i. p. 398. Dirleton, No 371. p. 182.

1678. January 23.

BRUCE against PATERSON

No 169.

AGNES PRINGLE being heir apparent to some tenements, gave a bond of L. 10,000 to Captain Paterson, with consent of her husband, who gave a back-bond, that he should only make use of this bond for adjudging the lands of Whitehaugh, whereunto she was apparent heir to her uncle; and that he should dispoise the half of the land to her, and retain the other. Thereafter, she gave another bond to David Bruce, who, in her name, pursues reduction of the first bond, as being null, granted by a wife *stante matrimonio*. It was answered, That wives may dispoise their heritage effectually *stante matrimonio*, with consent of their husbands, and the giving bond to have no effect, but to affect their heritage, is equivalent to a disposition; yea wives their other bonds in relation to their heritage, are valid.

A wife's bond found valid tho' granted without consent of her husband, she having taken a back-bond restricting it to execution against land of which she was apparent heir.

THE LORDS sustained this bond, in respect of the back-bond, whereby it had only the effect of a disposition.

Fol. Dic. v. i. p. 399. Stair, v. 2. p. 600.

. Fountainhall reports the same case.

This is a reduction of a bond and comprising, because it was granted by Agnes Pringle for borrowed money *stante matrimonio*, and so was null *ope exceptionis*. Alleged, It was an apprising of her uncle's lands, to which she was apparent heir, and he had given her a back-bond, discharging all personal execution, and declaring the design was only to comprise that estate, and obliging him to denude himself of the one half in his favours. THE LORDS found the allegiance relevant and proved by the back-bond, and assoilzied him from the reduction, and decerned him to denude of the half. Yet the Lords argued among themselves, *imo*, That this bond was null not being judicially sworn; *2do*, She had another more habile way to convey, viz. by a disposition, and the back-bond might have been taken by her husband without her knowledge, and such a contrivance might soon evacuate the privilege of revocation.

No 169. of such bonds ; *3tio*, If it was done to evite behaviour, it would not do, for the taking the back-bond imported a *gestio* by the act of sederunt in Nithsdale's case. THE LORDS did not regard this, because not proponed by the parties ; but this shews the cause deserves to be again considered.

Fountainhall, MS.

1705. November 15.

WILLIAM DUNCAN in Woodend of Drum *against* MARJORY FORBES, Relict of ALEXANDER IRVINE of Drum.

No 170.

Bonds granted by a wife *stante matrimonio*, found null, and not obligatory upon her, although the husband was a simple man, and she, at the date of these bonds, was empowered by an act of the Privy Council to uplift and discharge a certain yearly aliment for the subsistence of the family.

WILLIAM DUNCAN, as having right to three bonds granted by the Lady Drum to his father, having charged for payment, she suspended on this reason, That the bonds were null as granted by her *vestita viro*, without her husband's consent.

Answered for the Charger, Albeit by a common rule with us, a wife's obligation for debt contracted during the marriage is null, and not obligatory upon her, who is understood to be *sub potestate viri*, and to have nothing at her own disposal, yet this admits of several exceptions ; such as a wife may contract and oblige herself *stante matrimonio*, where she has a separate *peculium*, estate, or aliment, exempted from the husband's *jus mariti* ; December 19. 1667, Gairns against Arthur, No 155. p. 5954. ; February 23. 1672, Neilson against Arthur, No 184. p. 5984. Or when she is *præposita negotiis*, as has been often decided ; and the charger is precisely in the case of these exceptions. For the suspender, of the granting at the bonds charged for, had a yearly aliment of 6000 merks for subsisting of Drum's family, which she was impowered to uplift and grant receipts for to the administrators of the estate, without the concurrence or consent of her husband, who as a weak and simple man, might be understood to have been *sub potestate uxoris* ; and it was her fault only, that the sum she borrowed was not paid out of that alimentary fund, which was altogether at her own disposal.

Replied for the suspender, A wife's bond *stante matrimonio* is null, November 28. 1623, Schaw against Maxwell, No 5. p. 2074. ; December 21. 1629, Ayton against the Lady Halkerton, No 151. p. 5952. without the husband's consent, and sometimes with it ; as in the case of the husband and wife's joint obligation to pay sums, or perform deeds ; March 24. 1626, Greenlaw against Galloway, No 162. p. 5957. ; Hope, HUSBAND & WIFE, (Douglas of Tofts *contra* Elphinston, No 161. p. 5957.) ; December 15. 1665, Ellies against Keith, No 191, p. 5987. The reason is, because, *republicæ interest* to secure wives from being induced to exhaust by obligations the mean of their subsistence after dissolution of the marriage ; nor can the suspender be