

The Lords did sustain the same *pro tanto* ; and ordained the creditors to have preference to so much of the estate as they would choice, equivalent to the sums : that the lady's executors might have access to the rest.

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1679. *January 9.* ALEXANDER OGILVIE *against* OGILVIE of LOGIE.

ALEXANDER Ogilvie pursues Ogilvie of Logie, alleging, That he, being in terms of marriage with Helen Ogilvie, Logie's sister, he encouraged the pursuer to insist, and told him that his sister had a jointure, and that he was owing her 1000 merks by bond ; so, having advised him to go to Edinburgh for a warrant to be married, without proclamation,—in his absence he procured from his sister the retirement of the bond, and, in place thereof, did offer her a bond to her daughter by the first marriage :—and, therefore, concluding that he ought to renew the bond to the pursuer, as before.

The defender ALLEGED, That the libel was not relevant, because a wife is only incapacitated to do deeds prejudicial to her husband, after proclamation of the marriage ; and though that should be extended to the time of the contract of marriage, yet here there was no contract of marriage. And, though the defender had said he was owing his sister 1000 merks, yet, the pursuer having made no contract, he went on upon his own hazard. And the sum in question being heritable, he could have no right thereto *jure mariti*, but to the annual during the marriage. But, before either contract or proclamation, the woman was free, and might have gifted the sum to whom she pleased.

The pursuer ANSWERED, That, before contract or proclamation, though the woman's disposition could not be quarrelled, as in prejudice of the husband, simply ; yet where fraud is admixed, by inducing the man to marry on expectation of the sum, and, *medio tempore*, evacuating the same, that makes him liable to repair the damage occurring *ex propria fraude*.

The Lords would only sustain the summons and reply, in these terms,—that the marriage was agreed upon, the defender being present, and this sum agreed to be a part of the tocher ; and that, after the said agreement, he had induced the woman to give up the bond.

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1679. *January 15.* MR PATRICK REID *against* JAMES WOOD.

MR Patrick Reid, as assignee to a decret against James Wood, having charged him thereupon, he suspended on double-poinding ; wherein Mr Patrick was preferred, and a decret extracted. He suspended again, and a second decret of suspension was extracted ; and now he raises reduction and declarator, and insists on this reason,—that the last decret was unwarrantably extracted, there being a stop by deliverance of the Lords upon a bill.

It was ANSWERED, That the pretence of any stop cannot recal any decret, unless, *de recenti*, at the time of the extracting, it had been complained of, that