

of not payment of the principal sum, at the first term subsequent to her mother's decease, whereby she *alleged* that the bond was heritable, and pertained to her heirs, and could not pertain to the executor of her husband, in whose lifetime the term of payment came not, and who could not have right to the sum, nor prejudice his wife thereof; yet this was repelled, and the Lords found, that it remained moveable, and that the husband might have discharged it, the term not being come so long as he lived, and so pertained to his executors; and hereby the woman wants her right, which pertains to strangers, there being no bairns of the first marriage, which is hard. See January 15th 1628, Falconer *contra* Beatie, No 34. p. 5465, where the contrary is done, and the sum found heritable, and to pertain to the heir.

No 36.

Act. Nicolson.

Alt. Craig.

Clerk, Hay.

Fal. Dic. v. I. p. 387. Durie, p. 296.

1663. January 29. SCOT *against* MR JOHN DICKSON.

Scot, as assignee by her father to a bond, charges Mr John Dickson to make payment. He suspends on this reason, that the assignation being while the charger was wife to Scot her husband, the sum belonged to the husband *jure mariti*; and therefore craves compensation of the like sums, paid to, or for the husband. The charger *answered*, That though the date of the assignation was before her husband's death, yet her father kept the same in his custody, and it was not intimated till after the husband's death, and so the right not being established in the wife's person by intimation, could not accresce to the husband, unless the suspender would instruct that it was intimated before.

THE LORDS found, that seeing the assignation was now in the wife's hands, they would not put the suspender to prove the delivery thereof, during the marriage, but that it was presumed to have been delivered according to the date, and that thereby it became the husband's, *jure mariti*, though no intimation was in his time.

Fal. Dic. v. I. p. 387. Stair, v. I. p. 165.

No 37.

A sum assigned to the wife was found to become the husband's *jure mariti*, tho' not intimated by the wife till after his death.

1709. July 26.

Dame JANET MURRAY LADY PITFIRAN *against* MR ALEXANDER WOOD, Chamberlain to the Earl of Kinnoul.

No 38.

A bond granted to a Lady in lieu of the ordinary compliment of a gown, for

IN the suspension of a charge at the instance of the Lady Pitfirran against Mr Alexander Wood, for payment of L. 1400 contained in a bond granted by him to the charger, for the behoof of the Lady Cultmalundie her daughter, in lieu of the compliment of a gown for renouncing her liferent right in the lands

No 38.  
consenting to  
the alienation  
of her hus-  
band's lands,  
found not to  
fall under the  
*jus mariti*.

of Cultmalundie, purchased by the Earl of Kinnoul from David Drummond her husband;—the LORDS found the bond not compensable by a bond granted of the same date for the like sum by the husband to Alexander Wood the suspender, in respect the customary gratification to a wife for her consent to the alienation of her husband's lands, commonly called, 'the Lady's gown,' falls under the *paraphernalia*, and excludes the *jus mariti*; and it hardly consisted with *bona fides* in the suspender, to take another bond at the same time from the husband, to defeat the security granted to the Lady.

*Fol. Dic. v. 1. p. 387. Forbes, p. 350.*

\* \* \* Fountainhall reports the same case :

MR ALEXANDER WOOD chamberlain to the Lord Dupplin, now Earl of Kinnoul, grants bond to Dame Janet Murray, Lady Pitfirran, for L. 1400 Scots, who being charged, suspends on this reason, that he offered to prove by her oath, that though it bore borrowed money, yet her name was only inserted for the behoof of Lady Cultmalundie, her daughter; and that being acknowledged, then he behoved to have compensation; for *ipso jure*, the money being the Lady Cultmalundie's, it accresced to her husband, and he had a bond from him for the equivalent sum, which compensated the Lady's bond. *Answered*, It is very true, the Lady Pitfirran's name is for her daughter's behoof, but that will not prove that the sum therein contained accresces to Cultmalundie *jure mariti*; for it is offered to be proved, that when Cultmalundie sold his lands to the Viscount of Dupplin, it was agreed, that, besides the price, he was to give 100 guineas to the Lady for her consent to the disposition, and for renouncing her right and jointure therein, which gratuity is commonly called 'the Lady's gown;' and this bond was granted by the buyer's chamberlain to the Lady's mother on that very account; and it was not very honest to take a bond from the husband, at the same time to found a compensation to meet it; and such gratuities are of the nature of *peculium separatum* to the wife, and are as much exeemed from the husband's *jus mariti*, as her paraphernalia are; for what if the 100 guineas had been actually employed to buy her cloaths, rings, and jewels, the husband nor his creditors could have claimed no right therein, and no more can the husband claim the money so destined in compliment for giving her consent. *Replied*, The wife can have no moveable sums, though hid and screened under other confident names; but the same *ipso momento* accresce and belong to the husband. THE LORDS found this gratification given for the Lady's gown did not fall to the husband, but properly was her own; and therefore repelled the reason of suspension, and found the letters orderly proceeded against Mr Wood.

*Fountainhall, v. 2. p. 519.*