

ther than *in quantum locupletiores facti* by the marriage; and the *jus mariti* can extend no farther than a general assignation, which makes one represent *in valorem* of the sum assigned, but no farther, else marriage may involve a man in an infinite plague of dormant debts, that no human prudence could foresee; and therefore the customs of other nations have obviated this hazard, by appointing the husband to make inventory, else to be simply liable. And whatever the Lords might regulate by an act of sederunt, so they may relieve a poor gentleman insnared to an overburdened estate, never contracted by him, so as neither *ex contractu* nor *delicto* should he be liable. *Replied*, By the marriage, husband and wife become one person, and run the same hazard by a communication of debts and goods; and it is just you be liable, for you cover and protect her so, that, during the marriage, no personal execution can pass against her, and so you substitute yourself as debtor in her place; and the laws of the sovereign courts of Europe have now fixed on this, that the husband becomes personally liable for all the wife's moveable debts, *Gudelin de jure novissimo, et les coutumes de Paris, p. 344.* And so it has been oft found with us of late, as in Captain Gordon's case against Cesnock, No 24. p. 5787.; Doctor Lawder's and Crawford, (See APPENDIX.); Osborn and Menzies, No 25. p. 5785.; and many others; and the reason is, the husband by his marriage has right to all the wife's moveable goods, *ergo* by analogy of law and *paritate rationis*, he must pay all her moveable debts; and, *a contrario sensu*, as he has no right *jure mariti* to her heritable sums, so he cannot be subjected to her heritable debt, though he is free of both by the dissolution of the marriage. THE LORDS thought Mr Davidson's case very hard, to make him liable in the annualrents of the debts far exceeding the rents of his wife's lands; yet, *ita lex scripta est*, the same was now turned into a fixed known custom and law. Only, he was thus far relieved, that the Lords did not think him liable in the principal sums, but left them to affect the lands by adjudication and other diligence for securing that.

Fountainball, v. 2. p. 451.

1713. January 27.

ISOBELL MONCRIEFF and her HUSBAND, *against* KATHARIN MONYPENNY.

IN the process depending betwixt Isobell Moncrieff and the Lady Sauchop, the defender insisted for one half of all the defunct's moveables, (there being no children of the marriage) free of debts bearing annualrent, which she contended must affect the dead's part only, and could not diminish her legal share; because bonds bearing annualrent being heritable *quoad relictam*, and so not falling under the computation of moveables whereof she hath a share, such debts of her husband cannot burden her share of the moveables, and if the contrary should obtain, the interest of relicts might be entirely cut off.

Answered for the pursuer, Seeing the husband during the marriage hath not

No 25.

No 26.

Bonds bearing annualrent affect the dead's part only, if sufficient to satisfy them.

No 26. only the administration, but is *dominus actu*, and may dispose of the same even gratuitously, and the wife hath only right and interest *habitu*, which *exit in actum* at the dissolution of the marriage, her interest can reach no further than to the free moveables after payment of the husband's debts affecting the executry; *nam id solum nostrum, quod debitis deductis nostrum est*. Now bonds bearing annualrent are proper debts upon the whole executry.

THE LORDS found, That moveable bonds bearing annualrent, whereof the term of payment was past before the husband's decease, cannot affect the relict's share of the free gear, but affect the dead's part only in this case where the defunct had no children. *Vide* 20th June 1713, *inter eosdem*, No 5. p. 3945. See QUOD POTUIT NON FECIT.—RECOMPENCE.—TESTAMENT.

Fol. Dic. v. i. p. 386. Forbes, p. 649.

S E C T. IV.

Rents or Profits of Heritable Subjects.

1582. June, PENNYCOOK *against* COCKBURN.

No 27.

THE current profits of a right having *tractum futuri temporis* arising during the marriage, fall *sub communionem*.

Fol. Dic. v. i. p. 386. Colvill, MS.

* * * See this case, No 2. p. 5764.

1665. June 28. PITCAIRN *against* EDGAR.

No 28.

THE current annualrents of heritable sums falling due during the marriage, come under the communion, and accresce to the husband *jure mariti*.

Fol. Dic. v. i. p. 386. Stair.

* * * See this case, No 13. p. 5775.

* * * The like was found in the case Rollo *against* Brownlee,
No 121. p. 2653.