

*swered*, That the defenders were not concerned to argue what effect the wife's heritable debts may have against the husband's moveables, which is a point that the Viscount Stair owns to be dubious, but that it is enough for them to say, that the husband ought to be but liable for the wife's debt, in as far as he has her effects, whether heritable or moveable, which is confirmed by a third decision, *Gordon contra Lady Gight*, No 25. p. 5789.

' THE LORDS found the husband liable for a moveable debt, whether he be *lucratus* or not by the marriage; but their Lordships determined nothing as to the bill in question, only reserved to the parties to be heard before the Ordinary, whether the same be heritable or moveable.

Act. *Binning*.

Alt. *Rigg*.

Clerk, *Gibson*.

*Fol. Dic. v. I. p. 390. Bruce, v. I. No 84. p. 100.*

No 68.

1738. *January 24.*

DICK *against* CASSIE.

A HUSBAND who got made over to him, in the contract of marriage, all that belonged to his wife, *per aversionem*, found liable to pay an heritable debt contracted by her before the marriage; for a husband cannot lawfully take a right to all his wife's effects, without being liable to all her debts. See APPENDIX.

*Fol. Dic. v. I. p. 390.*

No 69.

1738. *November 3.*

WEIR *against* PARKHILL.

By the contract of marriage between John Parkhill and Mary Weir, relict of Malcolm M'Gibbon musician in Edinburgh, she, in consideration of the provisions made in her favour, 'disponed to her future husband, in name of dote and 'tocher, all lands, heritages, debts, and sums of money, heritable or moveable, 'goods and gear, and others whatsoever pertaining or due to her any manner 'of way, &c.' But with the reservation of a power and faculty to her 'to dispose of the sum of 10,000 merks to such person or persons as she should think 'fit.'

And Mary Weir having assigned this 10,000 merks to John Weir her brother; in an action at the instance of a creditor of Mary Weir's, brought after her death, both against John Weir and John Parkhill, the only question being, Which of the two should be found ultimately liable to the creditor? the LORDS found, 'That John Parkhill not having alleged that there were not sufficient effects intromitted with by him to pay the debts and answer the faculty, he was liable to the debts, and also to implement the faculty, to the extent of the subjects received by him.'

No 70.

A disposition *omnium bonorum* by a wife to a husband in a contract of marriage, renders the husband liable to implement all conditions of the grant, *tanquam quilibet*.

No 70.

Wherever an *universitas bonorum* is conveyed, it implies the burden of debts to the extent of the subject received, *quia bona tantum sunt quæ supersunt debitis deductis*: Nor does it alter the case that it is in a contract of marriage: For although where the husband is only, *qua* such, bound for his wife's moveable debts, the obligation upon him ceases by the dissolution of the marriage, except in so far as he is *lucratus*, yet where he takes from the wife a disposition *omnium bonorum*, he becomes liable *tanquam quilibet*.

Kilkerran, (PASSIVE TITLE.) No 1. p. 366.

1740. February 19.

DRUMMOND against STEWART.

No 71.

A person who advanced money to a wife for defraying her first husband's funeral expenses, and carrying on a reduction of her former contract of marriage, brought an action for payment against the representatives of her second husband. Found, that the debt not being constituted against her husband *stante matrimonio*, his representatives were not liable unless proof was brought that he was *lucratus*.

THE pursuer having advanced certain sums of money to his niece Jean Chalmers, for defraying her first husband's funerals, and carrying on a process of reduction of her contract of marriage with him, brought a process for payment thereof against the Representatives of her second husband.

The defences were, *imo*, Prescription, the last article of the account being dated *anno 1710*, which; it was *pleaded*, was founded on the statute introducing triennial prescriptions in all actions of debts, or merchant accounts, and other debts not founded on written obligations; and that this case fell precisely under the words of the act, 'such like debts not founded on written obligations.' *2do*, That this claim being only a debt of the wife's, not constituted against the second husband *stante matrimonio*, could not be brought against him after the dissolution thereof, far less against his representatives.

*Answered* to the *first*, That the pursuer was no writer or agent, and run accounts with no body, neither was he a merchant; so that he could not be included either under the words or meaning of the act 83d, Parliament 6, James VI. It has indeed been justly found, that writers' accounts are comprehended in the general clause, because the laying out of money and managing processes, being their proper business by which they live, their accounts are not presumed to lie over; and indeed they bear a great resemblance to merchants' accounts; but the pursuer lives in the country on his estate, and concerned himself in the affairs of his niece, as her *negotiorum gestor*; and his case is much the same as that of a factor, who, in the course of his constituent's affairs, laid out money for merchant goods, or any other articles comprehended in that statute. In like manner, if a curator had laid out money in affairs of a like nature with this, and should neglect to have his accounts settled for five or six years after the expiration of his curatory, could it be pretended that he would lose what he could show he had laid out for his minor's behoof, to lawyers, writers, &c. by the prescription taking place against him. On the contrary, it would appear, that a curator could demand repetition of what he had laid out as above, at any time within the 40 years, before the statute 1696, otherwise there had been no use for that act, if a prescription of three years had formerly taken