

No 319.

natural possession, seeing his wife's life use was reserved, and cannot summarily be put therefrom, *hoc ordine*, upon a supplication without process. *2dly*, If he were in a process, he would exclude the bairns, because the disposition being made after his contract of marriage and proclamation, no deed of his wife's could then prejudice him; and as for his ratification, he did it to satisfy his wife's importunity, but being granted to a wife during the marriage, he may and does recal it, it was *answered*, That it was not a donation to his wife, but to his wife's children, which no law makes revocable.

Which the LORDS sustained, and found the husband could not recal his ratification, not being in favour of his wife, but in favours of her children, at her desire.

Fol. Dic. v. 1. p. 409. Stair, v. 1. p. 581.

1686. February 2. & 3. SOMERVILLE *against* PATON.

No 320.

A DONATION by a wife to her husband's eldest son, though *eadem persona cum patre*, was not found revocable as a donation *inter virum et uxorem*.

Fol. Dic. v. 1. p. 410. Fountainball.

* * See this case, No 193. p. 5990.

1728. February 1. SANDERS *against* DUNLOP.

No 321.

A MAN having disposed his moveables to a third party, reserving his life use, with a power and faculty to his wife to alter, &c. this disposition, though nominally in favour of the third party, yet truly in favour of the wife, found revocable by him even after the wife's death, being no better than a cover *et fraus facta legi*; and here the wife's faculty to alter was a virtual fee, and the case the same as if the disposition had been directly in favour of the wife, with a substitution to the third party, in which the fee, established in the wife, being ever subject to revocation, there could be no pretence of a *jus quæsitum tertio* by her death. See APPENDIX.

Fol. Dic. v. 1. p. 410.

1776. August 10. SCOTT *against* LADY CRANSTON.

No 322.

IN the marriage settlement between Lord and Lady Cranston, the latter, who brought a large fortune to her husband, was provided to an annuity of L. 700 out of his Lordship's estates, both in England and Scotland, and particularly out of the lands of Crailing and Wauchope in the later; in virtue of which

settlement, his Lordship was infeft in these lands; and by a contract in the English form, of same date with the above settlement, his Lordship's estate in Northumberland is vested in trustees, for securing payment of the said L. 700, in aid of the security on the Scots estates. Lord Cranston being deeply in debt, the lands of Crailing and Wauchope were judicially sold for behoof of his creditors; but in the ranking, Lady Cranston stood preferable for payment of her annuity, and the purchaser was decerned to retain L. 14,000 of the price to answer that annuity. In 1770, Lord Cranston prevailed on his wife to execute a deed, whereby, with consent of her husband, she agreed to renounce her annuity out of the Scots estates, and betake herself to her security on the English property, on this ground, that his Lordship's creditors had consented in that case to give up all their accumulations, and accept of their principal sums, interest and expenses, in full of their demands. Lord Cranston dying in 1771, his widow married Mr Lade; and a claim was now made by both to be ranked on the price of the Scots estates, as unaffected by the foresaid deed of renunciation, which, being a donation *inter virum et uxorem stante matrimonio*, could not be effectual.—THE LORDS found, That in the circumstances of the case, the deed of renunciation by Lady Cranston was binding upon her and her husband, for his interest, and that she was bound to implement it.

This decision was reversed on appeal. See APPENDIX.

Fol. Dic. v. 3. p. 287.

No 322

SECT. III.

Postnuptial Contracts.

1664. November 22. M'GILL against RUTHVEN.

A POSTNUPTIAL contract of marriage is not reducible as *donatio inter virum et uxorem*.

Fol. Dic. v. 1. p. 410. Newbyth.

* * * See this case, No 77. p. 5696.

No 323