

The father and husband not being sole contractors, but the wife, they could not, after the contract and marriage, without her consent, alter her right. To the *third*, The creditors lending their money, *bona fide*, cannot prejudge the relict's right; for *bona fides* operates only in payment made, and other necessary deeds, but not in voluntary acts, as lending money, wherein the lender must follow the faith and condition of the borrower, whose rights, though never so clear in any record, yet if thereafter they be improven or reduced, the creditors' *bona fides* avails nothing; and though the relict made use of the contract vitiated, yet it was with reclamation against the vitiation; and therefore in the decret, the same is reserved, which is the ground of this declarator. To the *fourth*, The relict craves not the repetition of the fruits uplifted by the creditors; but only that the ground may be pointed for what she wants of bygones. To the *last*, By no practice was ever a wife prejudged, by not payment of the tocher; and albeit the father's being insolvent, might have been a ground to the husband to refuse to infest his wife; in any more than the annual rent of 7000 merks, till the tocher were paid; yet where he has actually infest her in more, and even before contracting of the creditor's debt, her infestment must stand valid, seeing it was less than what was her right.

THE LORDS found the vitiation of the contract to have been after the marriage, and sustained the declarator, and ordained the ground to be pointed for what she wanted of her infestment of 700 merks for bygones, and for the whole in time coming, unless it were proven by the wife's oath, that she consented to the alteration of her contract.

*Stair, v. 1. p. 678.*

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S. E. C. T. II.

Private Knowledge of a Prior Right.

1582. June. STIRLING against WHITE and DRUMMOND.

PRIVATE knowledge of a prior assignation was so far found sufficient certification, as to put another in *mala fide* who obtained a second.

*Fol. Dic. v. 1. p. 105. Colvil, MS. p. 152.*

\* \* \* See The particulars *voce* INTERDICTION.

1627. July 21. HAMILTON against M'CULLOCH.

THOMAS HAMILTON having apprised certain lands from William M'Culloch of Myrton, in payment and satisfaction of certain sums of money owing by the said William to the pursuer: After his apprising, and long before the comprifer

No 4.  
An apprising upon which no diligence proceeded for many years, found

No 2.

No 3.