

cause he was then minor, and had curators who had not consented to it; as likewise, that it was done inter virum et uxorem, stante matrimonio, quæ de jure prohibita et nulla est. It was *answered*, That that nullity received an exception, si morte confirmetur. It was *duplicated*, Non potest morte confirmari, si revocetur ante mortem, which was done in this case; because the Laird of Mellerstains in his own lifetime, and long after the Lady's infertment, had given infertment of the same lands to William Napier the pursuer's author; which the LORDS found not to be of the nature and effect of a revocation of the Lady's foresaid infertment.

No 3.

Fol. Dic. v. 2. p. 133. Haddington, MS. No 1286.

1626. *March 8.*TRAQUAIR *against* BLUSHIELS.

A SPECIAL donation *mortis causa* not found revoked by a testament, mentioning goods and gear in general, which was interpreted to be only such as were not disposed.

No 4.

Fol. Dic. v. 2. p. 133. Durie.

*** This case is No 2. p. 359t.

1631. *July 12.*L. HUTTONHAL *against* CRANSTOUN.

THE Laird of Huttonhal having assigned the right of the tack of the teinds of Huttonhal, whereof he was tacksman, to his wife in anno 1618; after his decease she pursues for exhibition and delivery thereof to her. After exhibition, William Cranstoun, who had comprised both the lands and teinds from the husband, for debt owing by him, *alleged*, The right of the tack thereby pertains to him, and not to the lady assignee; for that assignation was but *donatio inter virum et uxorem, stante matrimonio*, done for love and favour, and was revocable: Likeas, at the very day of the assignation, she granted a back-bond to her husband, whereby she obliges herself to quit that right, whensoever her husband should require her, to him, his heirs or assignees, and the right of the back-bond; and the power which the husband had thereby to require her to quit her right, and also the husband's power which he had to revoke, he *alleged*, by the comprising from the husband of his right, was now competent to the comprising, and devolved in his person, sicklike as if he had been made second assignee by the husband to this tack; in which case, that first assignation made to the wife had been revoked, and now the like must be in respect of the comprising, which is a judicial assignation; and the Lady *answering*, That that comprising cannot be respected as a revocation, neither has the comprising

No 5.

Posterior comprising creditors found to have no power to challenge or revoke a donation by a debtor to his wife. See No 12. P. 1134^s.

No 5. any right of the back-bond, for revocation must flow from some deed of the husband, either express or tacit, whereby his mind may be understood, and that it was his will to revoke, and cannot be collected from the deed of a third person, but by a deed done by himself, whereby it may be presumed that his mind was to revoke; likeas, in the contrary, by a posterior deed done *in anno* 1621, he declared that he persisted in that same mind, and had no intention to revoke, in so far as by his charter he disposed to her the lands of Huttonhal, and also the teinds thereof, in recompence of other lands renounced by her, at her husband's desire, and which he had sold, and wherein she was conjunct fiar, and which were far more worth than both the lands and teinds contained in the charter; which deed being *donatio remuneratoria et arriidagor*, cannot be subject to any revocation, but is irrevocable in law; and so the comprising, which is long posterior to this charter also, can give no place to this compriser, to quarrel this assignation or charter;—and the compriser *duplicing*, That this charter had only one word of the teinds in the narrative, and was neither mentioned in the *tenendas* nor *reddendo* of the charter, and was not *habilis modus* to give right to the teinds, the maker of the charter never being infest, so that the charter cannot make the assignation whereupon the pursuit is founded to subsist, specially against a compriser for causes of just debt, the comprises being clothed with seven years possession, and this assignation never being intimated, nor inhibition served thereon, but being a private act betwixt husband and wife, never made manifest, but remaining obscure and private; the LORDS found the tack ought to be delivered to the wife as assignee, having right thereto notwithstanding of the comprising, and compriser's allegiance and duply, which was repelled; for the LORDS found, that the compriser had not right to revoke, or to require by the back-bond, as the husband had, specially in respect of the charter, which albeit it was not a legal right, to give her security of the teinds, which the husband had not in heritable right, yet it was a declaration that he persisted in that same mind, and had no intention to revoke, and that it bore, "to be given to her in recompence of lands," renounced by her as said is, which the pursuer offered to prove she had done; and which reply, bearing *ut supra*, the Lords admitted to her probation.

Act. *Stuart & Mowat.*

Alt. *Nicolson & Craig.*

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 133. Durie, p. 594.

* * * Auchinleck's report of this case is No 357. p. 6151. *voce* HUSBAND and WIFE.

1635. *March 25.*

LD LAURISTON *against* LADY DUNIPACE.

No 6.

A PERSON granted to his wife an additional jointure out of certain lands. He afterwards granted a security for a debt equivalent to the worth of the lands,