

that the revocation was made after the wife's decease, and so was not done *debite tempore post jus acquisitum heredi*, who could not be prejudged of that benefit of the obligation, by that revocation done after the wife's decease, and after the heir became clothed with the right, whereof he could not be prejudged but by a deed done by himself; for the wife and the husband once agreeing upon the choice of an heir, to whom they had provided by consent the fee of that money; neither could they, far less one of them alone without the other, alter that choice which they had made, and much less could the alteration be made against the will of the heir, after the decease of the wife, who died in that will; which allegiance was repelled.

No 317.

Act. —.

Alt. *Nielson*.Clerk, *Scot*.*Fol. Dic. v. 1. p. 410. Durie, p. 717.*

1663. February 19. BESSIE MUIR against JEAN STIRLING.

THE said Bessie Muir pursues her mother, as executrix to her father, for payment of a legacy of 8000 merks left in his testament, subscribed by the defender, and confirmed by her after her husband's death.—The defender *alleged* absolutor, because she, by the contract of marriage, was provided to the liferent of all sums to be conquest; and albeit she consented to the legacy, it was *donatio inter virum et uxorem*; and for her confirmation, it cannot import a passing from her own right, but only her purpose to execute the defunct's will according to law, especially she being an illiterate person.—The pursuer *answered*, That this donation was not by the wife, to, or in favour of the husband, but of their children, which is not revocable; and also the confirmation homologates the same, seeing the wife might have confirmed, and protested to be without prejudice of her own right.

No 318.

A donation by a wife, directly in favour of her husband's children, *et contra*, is not revocable.

THE LORDS repelled the defence, in respect of the reply.

*Fol. Dic. v. 1. p. 409. Stair, v. 1. p. 183.*

1669. January 15. HAMILTON against BAIN.

UMQUHILE AGNES ANDERSON having disposed all her goods and moveables to ——— Bain's bairns of the first marriage, and made delivery thereof, conform to an instrument produced; and having thereafter married John Hamilton, he ratified the former deed done by his wife in favour of her bairns. She being now dead, both parties give in supplications, desiring possession of these goods disposed to the bairns: They alleged upon the mother's disposition, ratified by her second husband. And the husband *alleging*, That it being but a fictitious possession by an instrument, he, as husband, being *dominus bonorum*, is in the

No 319.

Found in conformity with the above.