that the revocation was made after the wife's decease, and so was not done *debito tempore post jus acquisitum hæredi*, 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 allegeance 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.

No 318.
A donation by a wife, directly in favour of her husband's children, *et e contra*, is not revocable.

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* absolvitor, 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.

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.

No 319.
Found in conformity with the above.

UMQUHILE AGNES ANDERSON having disponed 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 disponed 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. natural possession, seeing his wife's liferent use was reserved, and cannot summarily be put therefrom, *hoc ordine*, upon a supplication without process. 2*dly*, 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 prejudge 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. *Fountainhall.*

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

1728. *February* 1. SANDERS *against* DUNLOP.

No 321.

A MAN having disponed his moveables to a third party, reserving his liferent, 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