

her husband must be understood as in place of the contract of marriage, Mr Robert having received no other tocher; and being a person of good quality, deserving all that the pursuer had; and by the Lords frequent decisions, *provisions to wives during the marriage that had no provision or contract before, are never found revocable.* It was answered, That such rights are valid, when granted expressly for supply, either of jointure or tocher, or when the same is remuneratory, and the husband gives a jointure suitable; and any thing the pursuer got from her husband, was within two chalders of victual, not given at the time of this assignation; and he had by his wife above 20,000 merks, which is more than sufficient; and it cannot be thought that her assignation to a liferent, constituted by her former husband, which uses not to be assigned in so far as concerns the wife's right, if she survive her husband, should be a remuneratory donation in place of a tocher.

THE LORDS found that the assignation to the pursuer's liferent, constituted by her former husband, was a donation revocable, unless her husband had given her a suitable liferent, equivalent to the sums he got by her, or that it had been expressly given her in place of tocher. See PROOF.

Fol. Dic. v. 1. p. 411. Stair, v. 2. p. 157.

1676. December 15.

INGLIS contra LOURY.

JOHN INGLIS pursues William Loury to deliver up to him a bond of 500 merks, granted by East Sheils to umquhile Loury, and which she did assign to young East Sheils. It was alleged for the defender absolvitor, because he offered him to prove that this bond was assigned by the said Loury to her husband, to which assignation the defender hath right by progress. It was answered, That the allegiance ought to be repelled, because that this being an heritable bond bearing annualrent, granted to the wife before the marriage, it did not fall to the husband *jure mariti*; and therefore the wife's assignation *stante matrimonio*, is still revocable, *nisi morte confirmetur*. It was replied, That though this allegiance holds true, while it is in the husband's person, yet it cannot be extended against singular successors, obtaining assignations for onerous causes; *2do*, If there was no contract of marriage, this assignation is valid in place of a contract, or at least it did expressly bear *for implement of a contract*.

THE LORDS found that the assignation of an heritable bond being a donation by a wife to her husband during the marriage, that the same was revocable by the wife at any time in her life, even after her husband's death, by a posterior assignation, which was effectual against every singular successor, though acquiring *bona fide* from the husband for onerous causes; and found, that albeit a provision to the wife, during the marriage, where there was no contract or prior provision, is not revocable, the man being naturally obliged to provide his wife, this does not hold in an assignation in favours of a wife granted to her husband,

No 344.

No 345.
A disposition by a wife to her husband, of an heritable bond during the marriage, found revocable by her as a donation, though there was no contract, nor had she brought any other tocher with her.

No 345. though there were no contract, unless the assignation did bear, *in implement of her contract of marriage*. See PERSONAL and REAL.

Fol. Dic. v. I. p. 411. Stair, v. 2. p. 480.

S E C T. VII.

Remuneratory Donations.

1635. March 25. L. LAWRISTON *against* LA. DUNNIPACE.

No 346.

A literent infestment granted to a wife *stante matrimonio* found not revocable, as being a remuneratory donation, the wife having brought a considerable tocher with her, and there being no contract of marriage.

In a reduction, at the instance of the Laird of Lawriston, against La. Dunnipace, of a bond granted by her umquhile husband to her, *stante matrimonio*, and long after the marriage, whereby he obliged him to infest her, during her lifetime, in the lands enumerated in the bond, which he obliged him to make worth 30 chalders of victual to her yearly, and that in recompence of the tocher of 11,000 merks, which, by that bond, he had confessed he had received from her, and also in recompence of a third, and terce, of whatsoever lands which she might claim by his decease; which bond, with the infestments given to her, following thereupon, was desired to be reduced by the pursuer, upon this reason, because the same was *donatio facta inter conjuges stante matrimonio*, and so in law was revocable, and the same was revoked, in so far as thereafter, after that bond, and infestment thereupon, her umquhile husband had disposed these lands to this pursuer for relief of the cautionry, wherein the pursuer was bound, for her said husband, to his creditors; and which burdens he was compelled to pay to the said creditors; which disposition he alleged to be a tacit revocation of the said bond and infestment given to the defender; and the defender contending, that tacit revocations have no place to revoke donations betwixt married folks, neither of the law, nor of the practice of Scotland, especially where the posterior disposition made by the husband was only a wadset, and so only an hypothecation granted for warrandice of his cautionry, and was not an heritable and irredeemable alienation; for which the defenders alleged *Novel. Constit. 162. Authent. Collatione 9. cap. 1.* Attour, they *alleged*, that this right to the Lady could never be revoked, but in law was irrevocable either by tacit or express revocation, because it was not *donatio simplex et propria*, which is only subject to revocation, but the same was *donatio remuneratoria*, given by the husband in compensation of her tocher-good, and also in satisfaction of all terce, which donation might be also