

*actus in jure validus* to import a passive title, yet if the minor found himself lesed, he might revoke and be restored against it *in integrum*.

Craigie went a greater length than was needful, for he thought even a protutor's intromission would bind a passive title on the pupil; but this is scarce consonant to the analogy of law. *Advocates' MS. No. 646, folio 302.*

1677. *November.*

ANENT REFERENCE TO A WIFE'S OATH.

IT was questioned, where a woman in her viduity lends out a sum of money, and takes a bond for it, and afterwards marries, and her husband charges the debtor to make payment, and he suspends, and offers to prove by the wife's oath that either it is paid, or that she discharged him of it, or promised never to seek it; and the husband answers, that he will not suffer his wife to depone to his prejudice; whether this be a good answer, yea or no. If he produce the wife's discharge in writ anterior to her marriage, there is no doubt but it will cut off the husband from seeking that debt. But it remains more controverted where he has no other way of probation of the payment or promise, but by the wife's oath; for if her oath were receivable, a widow of an opulent fortune might easily, by her oath, defraud and disappoint her husband, for she might lift up all she could get, and give them down the one half, to get it up from her husband: which is not to be allowed; yet see it sustained in Dury, *March 16, 1622, Home and Macmath*. Yet some make a distinction, that a husband needs not suffer his wife to depone in a cause where the result of is *ad debitum contrahendum*, to infer or draw on an obligation or a debt upon the husband, for there he is *in damno vitando*; but she may be forced to depone *ad debitum distrahendum*, for liberating a third party from a debt, because there the husband's prejudice is not so great, and he is *in lucro captando*; yet even there she has a prejudice. Yet if collusion could be made out, that she did it maliciously, and, only to prejudice her husband, lifted sums, I think it would have its own weight, and deserve consideration, since *dolus proprius nemini debet prodesse*. What if the sum lent by the wife, in her viduity, be due by an heritable surety? then the husband, *jure mariti*, has right to no more but the bygone annualrents of it, and in time coming, unless it was made moveable by a charge of horning; yet, as administrator to his wife, he may uplift the principal, and he and she discharge it; and if she once consent to that, then it becomes moveable, and falls under his *jus maritale*.

1677. *November.*

ANENT BONDS BY MARRIED WOMEN.

WHAT if a woman grant a bond with her husband, and swear never to come in the contrary, nor to quarrel or impugn it, if she be charged for the sum, and allege *absolvitor, ex senatus-consulto Velleiano*, as being married at the time, whether the oath integrates the obligation, so as to make her liable? Either she is bound as principal, or as accessory with her husband, *et eadem facilitate jurat qua contrahit*. See the *Authent. C. Si adversus venditionem*, beginning *Sacramenta Puberum*. See Dury, *March 16, 1622, Sir George Home* against *Macmath*. *Vide supra, June 26, 1677, Charles Oliphant* and *Provost Curry*.

The Lords, on the *8th of November 1677*, found the bond, *ipso jure*, null, *quoad*