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 prejudge 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 accessary 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*

the woman, because then *vestita viro*, though the bond was *juramento vallatum. Vide infra, No.* 4, in *Barbara Grant* and *Cuthbert's case.*

Advocates' MS. No. 647, *folio* 302, *margin.*

1677. *November.* ANENT TRUSTS AND BACK-BONDS.

THIS case was started among the Advocates,—A man assigns a bond owing to him by a certain person in favours of another, to the effect that other person may thereupon do diligence, lead a comprising, and then denude; and that other person who is the trustee, feoffee, or fidei-commissary, to whom it is conveyed, grants a back-bond, declaring the trust, and obliging to denude. The trustee, either voluntarily, or upon legal diligence, transfers this bond, and apprising following thereupon, in favours of another party, not him by whom he was entrusted; or the right of it is adjudged or apprised from him by some of his creditors legally, who found the right of it standing in his person, and they become infeft upon their diligence, and dispone and assign it to another, and he to a fourth; and so it passes amongst many hands, and to sundry singular successors. Now, the question is, The first person that intrusted him, and to whom the back-bond clearing the trust was granted, or his heirs and assignees, getting notice of this conveyance clearly to his defraud and prejudice, made by one in whom he put confidence, if he may not raise a declarator of the trust, founded on the back-bond, against these singular successors: (for that he will prevail against the granter of the back-bond and his heirs, there can be no imaginary doubt:) and if the trust be so connexed to the thing trusted that it is inseparable from it, and follows it, *licet transierit per mille manus*, as *accidens reale*, or if it be only a personal obligement that affects not *rem ipsam realiter. Vide infra*, [No. 722, *February* 6, 1678,] *Hector Mackeinzie's case.* Either the back-bond is of the same date, and before the same witnesses, and relative to the disposition of the thing trusted, or it is of a different date. If it be of the same date, it is *pars contractus et pactum incontinenti adjectum*, and may seem to affect the thing disponed; but if it be of another date, then it cannot be pretended to. 2*do*, Either he in whose person the disposition and right was trusted, transferred it to another for onerous causes, or without it. If the third party, who is the singular successor, has acquired it gratuitously, he may the less grudge and complain to have the trust to meet him, and affect and follow the thing disponed. But if he be an assignee for a cause onerous, and not *particeps fraudis*, knowing nothing of the back-bond, it is not so easy to comprehend how the back-bond or trust can be obtruded or declared against him, so as to clog his right; for what was there in law to put him *in mala fide* to bargain and contract with that person whom he found to have the sole and undoubted right of the lands or bond standing in his person? How could he, without divination, know it was only a trust, and that there was a back-bond; there having been no intimation of it made to him, no inhibition served upon it to put the lieges *in mala fide*, or to ascertain them there was such a thing? And if such latent deeds were regarded, there could be no commerce nor freedom in bargaining anent rights. Yea, though the back-bond were registrate, yet that cannot be esteemed a sufficient intimation, since that registration is not *necessitatis*, but only *actus meræ voluntatis;* and the lieges are not bound to search for it, be-