

No 308. 1684. *March.* SYBILLA M'ADAM *against* TROPHEN.

FOUND, that a husband's contracting of debts after he had granted an additional provision to his wife *stante matrimonio*, was a tacit revocation of the said provision, he not being now able to pay all his debts.

*Harcarse, (STANTE MATRIMONIO.) No 879. p. 249.*

1686. *February.* MARY STEWART *against* JOHN FOULIS, Apothecary.

No 309.

A substitution by an heiress, of her estate in favour of her husband's heirs and assignees, was reduced, as being *donatio inter virum et uxorem*.

MARY STEWART having, in her contract of marriage with John Foulis, resigned her lands (whereof she was heiress) in favours of him and her in conjunct fee, and to the bairns of the marriage in fee; which failing, the one half to his heirs, and the other half to her own heirs; and they both having thereafter, *stante matrimonio*, made resignation in favours of him and her in conjunct fee and liferent, and to the son of the marriage; which failing, to the husband's heirs and assignees; after dissolution of the marriage, the wife revoked, and raised reduction upon the head of minority, and as being *donatio inter virum et uxorem*.

*Alleged* for the Defenders: There was no lesion; nor could the deed be reputed *donatio inter virum et uxorem*; because, *imo*, By the contract of marriage the husband was fiar, for the return of the half to the wife and her heirs, failing children, made them but heirs substitute to him; and so he might have altered the terms of succession without her consent, or his creditors might have affected or carried away the whole estate by diligence, and her giving consent was but a token of her obedience, and no lesion. *2do*, The alteration of the rights, as they stood by the contract, being made in favours of the son immediately, and to the husband only, upon the event of the substitution's taking place, by the failing of children of the marriage, it cannot be reputed *donatio inter virum et uxorem*.

*Answered*, Whatever might be pretended, had the disposition in the contract been from a third person in favours of the husband and wife in the terms foresaid, yet, seeing it proceeded from the wife herself, it must be reputed a qualified fee in the husband, so as he could, by no voluntary deed, evacuate the right of succession reserved to her; otherwise heiresses could never be secure of the return of any part of their estate, however well it be provided in their contracts. *2do*, Deeds of a wife to her husband's apparent heir, who is *eadem persona* with himself, ought to be construed in favours of the husband, otherwise it were easy to exclude her from her privilege. *3tio*, There is a provision empowering the husband to dispoise the estate without his wife's consent, which imports, that the right was to his behoof; besides, the chil-