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.

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*.

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

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, 1*mo*, 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. 2*do*, 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. 2*do*, 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. 3*tio*, There is a provision empowering the husband to dispone the estate without his wife's consent, which imports, that the right was to his behoof; besides, the chil-

dren of the marriage being now all dead, the benefit would accresce to the husband's heirs. No 309.

THE LORDS reduced the substitution in favours of the husband's heirs and assignees, as being *donatio inter virum et uxorem*.

Fol. Dic. v. 1. *p.* 409. *Harcarse*, (STANTE MATRIMONIO.) *No* 883. *p.* 251.

1688. *February.*

CATHARINE GORDON *against* ELISABETH and ANNE GORDONS. No 310.

FOUND that a bond given by a man to his wife, after contract, and before marriage, was not revocable as done *stante matrimonio*.

Fol. Dic. v. 1. *p.* 412. *Harcarse*, (STANTE MATRIMONIO) *No* 888. *p.* 252.

1753. *February* 8.

JOHN BARBOUR and WILLIAM BLACKWOOD *against* AGNES HAIR.

No 311.
A husband on death-bed gave his wife in presence of witnesses, two bills blank indorsed, desiring her to keep them for her own use. Found that this was a donation *inter virum et uxorem*, and that the bills belonged to the relict.

HUMMPHRY BARBOUR, by his testament, left some part of his moveable estate to his relations, and the rest to his wife, the defender. After his death, she had an universal intromission with his writings; and, having been called before the sheriff, at the instance of her husband's executors, in an action of exhibition and delivery of them, she had acknowledged, upon oath, that she had lodged them all, at the desire of the executors, in the hands of a third party, excepting two bills, which her husband, some days before his death, (he being then ill, but not bed-rid,) took out from among his other writings, indorsed blank, and delivered to her, desiring her to keep them for her own use. The sheriff found that the bills belonged to the widow. The executors advocated the cause; and the defender having offered to prove the donation by witnesses, a proof before answer was granted.

At advising of the proof, it was *pleaded* in point of relevancy for the pursuer, That a legacy is not properly granted by a blank indorsation of a bill, and although it were, could not be proved by witnesses; for that, 1*mo*, It happens frequently, that persons in trade have bills indorsed blank, lying by them at the time of their death; now the consequences would be dangerous, were their widows, who may easily get possession of such bills, permitted also to acquire the property of them, merely upon proving by the testimony of two witnesses, a delivery and donation from the deceased. 2*do*, A legacy, as has been found, may not be constituted by bill; and this decision applies with no less force to an indorsation of a bill, which is a new draught upon the acceptor, in favour of the indorsee; and as bills, and the method of transmitting them by indorsation, were introduced for the conveniency of com-