

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.

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, *imo*, 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. *2do*, 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-

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.