

leprosum. And it is *juris in controversi* that the bond given by the Lady Kirkhouse for the L. 16 Sterling is simply null, being *stante matrimonio*; *ergo*, the impignoration as a consequence thereof is likewise null, *sublato principali tollitur accessorium*. It is true, though law refuses its assistance to womens bonds, so as to produce any civil effect, yet there is a natural obligation in consequence to repay them; which goes so far that a cautioner in a wife's bond is effectually bound, though she is free, *quia accedit obligationi naturali*; but that can never support the impignoration here, which is so connected with the bond, that it is every whit as void and null as it, and it were of the most dangerous and last consequence to allow wives to dispose upon their jewels and paraphernalia at their pleasure; for it is to be feared when they are gone, the husband must make them up again, by putting others in their place, which may ruin families in a short time. And as the Roman law put the wife *sub cura et tutela mariti*, that he was her curator and administrator in law, that her deeds were as much null without his consent as a minor's without his curators, so our law trode in the same footsteps; for in the case of the Lady Bute and her Son, Jan. 5. 1666, Div. 7. See, 2: *b. t.* an assignation of a part of her jointure after proclamation of bans and her second contract, though not yet married, was found null, because it wanted the second future husband's consent; and our old law quadrates with this, as appears by *Regiam Majestatem, lib. 1. cap. 30. § 6.*; and *Quon. Attach. cap. 21.* where a wife can make no contract or paction whatsoever without her husband's consent; and if so, then far less can she alienate or impignorate her paraphernals without his express consent. This does not hinder but she impignorate moveables to furnish necessaries to the family, for that is *in rem versum mariti*; but it is not pretended here that the L. 16 Sterling she borrowed from Gribton came one penny of it to Kirkhouse's behoof; and though as *preposita*, she may contract debts, yet these do not bind her, but her husband, as has been oft found; 21st December 1629, Ayton, No 151. p. 5952.; and 29th January 1631, Porter, Div. 9. *b. t.* So the impignoration is absolutely null. THE LORDS by a scripp plurality found wives had the sole administration of their jewels, when in straits to raise money; and therefore sustained the Lady Kirkhouse's impignoration, though done without her husband's consent. Some merrily said this was too great an interlocutor in favours of women.

Fountainhall, v. 2. p. 660.

1720. February.

COLQUHOUN of Tillihewn and ELIZABETH ANDERSON His Lady against
EXECUTORS of the Lady ROSEBURN.

A WOMAN, *vestita viro*, granted bond for 5000 merks to the heirs of her daughter's marriage, reserving her own liferent. THE LORDS sustained the obligation, it not being to take effect during the granter's life. See APPENDIX.

Fol. Dic. v. 1. p. 399.