

creditors, though posterior ; and likewise found the allegiance relevant, that the narrative was false, and so the disposition without a cause. See PROVISIONS to HEIRS and CHILDREN.

*Fol. Dic. v. I. p. 180. Stair, v. I. p. 195.*

No 42.

1713. November 26.

MARY BORTHWICK against ELISABETH WOOD.

By contract of marriage betwixt Patrick Cunningham, cooper in Leith, and Elisabeth Wood, all moveable sums that should happen to be owing, and other goods and gear that should pertain to Patrick at his decease, were provided to belong to Elisabeth in the event of her surviving him without children of the marriage ; and that it should be lawful to her, after her husband's decease, to intromit and dispose thereon without confirmation ; which contract, Mary Borthwick, Patrick Cunningham's mother, did ratify, by a writ subscribed by her on the back thereof. The said Patrick Cunningham having died without children, and Mary Borthwick obtained a decret-dativè as creditrix to him, pursued Elisabeth Wood his relict to give up inventory of her husband's moveables, in order to expedite a confirmation ; who offered a bill of advocation to the Lords upon iniquity committed by the Commissaries, in finding that Elisabeth Wood ought to give up inventory of the whole goods and debts of the defunct ; albeit she was not only an onerous assignèe, in her contract of marriage, to all her husband's moveables, with power to intromit therewith immediately after his decease without confirmation, but also Marion Borthwick had consented to and ratified Elisabeth Wood's right in its full extent.

To which it being answered for Marion Borthwick, That a general disposition of all goods and gear the disponent should have the time of his decease, implying tacitly *deductis debitis*, can never give the receiver a preferable interest in her husband's effects, or take effect, after his decease, to exclude his lawful creditors from affecting the subject, which behoved to be confirmed as in *bonis ejus*, and might have been pointed in his lifetime ; nor can Marion Borthwick's ratification of the contract hinder her to affect the husband's moveables, for payment of a just debt contracted after the contract.

THE LORDS refused the bill of advocation from the Commissaries.

*Fol. Dic. v. I. p. 180. Forbes, MS. p. 6.*

No 43.

A general disposition by a husband to his wife, in their contract of marriage, with power to intromit after his death without confirmation, found to give the wife no preferable right to the creditors of the decease, and not to hinder them from affecting the estate with diligence.

1724. July.

STIRLING against LAURIE.

In a general assignation to the wife, of heritable and moveable subjects, intimated, after the husband's decease, to a debtor, from whom she uplifted several years annualrents of an heritable bond ; the LORDS preferred an adjudication deduced after intimation, in respect the general assignation was not confirmed. See SERVICE and CONFIRMATION.

*Fol. Dic. v. I. p. 180.*

No 44.