

It was *answered* for Gordon, That the disposition to him was absolute and without any limitation; and the pursuer had a particular legacy left her, which shews that the defunct did not intend that she should succeed to any more; and the deed is not only in favours of Gordon, but even of his assignees, and a cessible right is always absolute with respect to the subject conveyed. Nor did the giving a legacy to Gordon exclude him from the surplus; for the defunct being afraid that her effects would not answer all the legacies, intended that in all events he should have his legacy at least clear.

“ THE LORDS before answer remitted to the Ordinary, 18th January, to take Robert Inglis and Robert Broadfoot’s oaths on what was communed and treated the time of granting the disposition.”

Robert Inglis having deponed, “ That the disponent advised with him concerning the disposal of her worldly affairs, and that she told him at the time the disposition was granted, that the defender should enjoy all the subject disposed, with the burden of her legacies therein contained, and 500 merks left verbally to Mr Andrew Mitchell minister, and that she was of opinion her estate would be more than sufficient to answer her legacies; but that the reason for her giving a particular legacy to the defender was, that in all events he might have some share of her means, in case by any fatality or bad debtors any part of the subjects should perish, and the proportional deduction upon the legacies was concerted in that view.”

Broadfoot deponed, “ That the defunct did not explain her meaning or intention to him, but that he wrote out the paper according to the instructions he had from the defunct, and the amendments put upon the scroll written by Robert Inglis.”

“ THE LORDS found the disponent had right to the surplus.”

Reporter, *Lord Grange.*

Act. Graham et Erskine.

Alt. Hay.

Fol. Dic. v. 3. p. 307. Edgar, p. 13.

1724. July 21.

WILLIAM DENHOLM Wigmaker in Edinburgh *against* ANNA WATT Relict of Robert Drysdale Merchant there.

WILLIAM DENHOLM, as creditor to Robert Drysdale by two bonds of 200 merks each, payable the first term after Drysdale’s decease, insisted against Anna Watt his relict, as executrix or vitious intromitter, for payment of the sums in the bonds.

It was *alleged* for her, That the testament was exhausted, she being creditrix by her contract of marriage for more than the value of all the effects left by her husband at his death, in regard, that, by the contract, he had disposed to her the half of his household furniture, and likewise the half of his merchant-

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that by granting him a special legacy, the disponent indicated her will that he should have no more.

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A wife was provided to the half of her husband’s household furniture, and half of his shop goods, according to an inventory, in which the goods were

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valued, but
the furniture
was not. At
the husband's
death the shop
goods were of
less value
than at the
date of the
inventory ;
but it was
found, that
she could
claim no more
than the half
of her hus-
band's effects
at the time of
his death.

goods, both by inventory, with this difference, that in the inventory of the merchant goods, every particular was valued, and the total sum extended ; but the other contained only the particulars of the furniture, without any value put upon them ; from which it was contended, that as she was creditrix in the *ipsa corpora* of the household furniture, so she was in the value of the merchant-goods as at that time, because it could not be said with any propriety, that she was creditrix in the *ipsa corpora* of the merchant-goods, which, from the nature of the thing might next day have become the property of a purchaser.

It was answered, That the design and meaning of valuing the contents of the inventory of goods was no other, than to direct them to a prudent and accurate management in the sale ; but it could not be thought, that the husband intended that she should be creditrix in the extent of the sum to which they were valued ; for had he so designed, it was easier for him to have provided her to a sum equal to it in her contract ; and therefore, as the property, as well as the administration of the merchant-goods remained with the husband during his life ; so the wife, by her contract of marriage, was only creditrix for the half of the merchant-goods that should be in the husband's possession at the time of his death.

“ THE LORDS found, that the defender, by her contract of marriage, was only creditor for the half of the value of the goods and gear at the time of the husband's decease.”

Reporter, Lord Pancaitland.

Act. Ja. Fergusson, senior.

Alt. Hugh Dalrymple, senior.

Clerk, Gibson.

Fol. Dic. v. 3. p. 307. Edgar, p. 98.

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1729. July 18.

ANDERSON against ANDERSON.

IN a contract of marriage there occurred the following clause : ‘ And in case there should happen to be only one daughter, he obliges him to pay the sum of 18,000 merks ; if there be two daughters, the sum of 20,000 merks, whereof 11,000 to the eldest, and 9,000 to the youngest ; and if there be three daughters the sum of 30,000 merks, 12,000 to the eldest, 10,000 to the second, and 8,000 to the youngest.’ A fourth daughter having existed of this marriage ; in a process betwixt her and the other three, the question occurred, whether she could have any share of the 30,000 merks upon the presumed will of her father, or if she was to be left to insist for her legal provision *ab intestato* ? THE LORDS found the fourth daughter entitled to a proportion of the 30,000 merks, and found her proportion, suitable to the provision made in the contract of marriage, to be 4,500 merks ; so as to restrict the eldest daughter to 10,500 merks, the second to 8,500 merks, and the third to 6,500 merks. See APPENDIX.

Fol. Dic. v. 1. p. 441.