

*swered*, That the defenders were not concerned to argue what effect the wife's heritable debts may have against the husband's moveables, which is a point that the Viscount Stair owns to be dubious, but that it is enough for them to say, that the husband ought to be but liable for the wife's debt, in as far as he has her effects, whether heritable or moveable, which is confirmed by a third decision, *Gordon contra Lady Gight*, No 25. p. 5789.

No 68.

' THE LORDS found the husband liable for a moveable debt, whether he be *lucratus* or not by the marriage; but their Lordships determined nothing as to the bill in question, only reserved to the parties to be heard before the Ordinary, whether the same be heritable or moveable.

Act. Binning.

Alt. Rigg.

Clerk, Gibson.

*Fol. Dic. v. I. p. 390. Bruce, v. I. No 84. p. 100.*

1738. January 24.

DICK against CASSIE.

A HUSBAND who got made over to him, in the contract of marriage, all that belonged to his wife, *per aversionem*, found liable to pay an heritable debt contracted by her before the marriage; for a husband cannot lawfully take a right to all his wife's effects, without being liable to all her debts. See APPENDIX.

No 69.

*Fol. Dic. v. I. p. 390.*

1738. November 3.

WEIR against PARKHILL.

By the contract of marriage between John Parkhill and Mary Weir, relict of Malcolm M'Gibbon musician in Edinburgh, she, in consideration of the provisions made in her favour, 'disponed to her future husband, in name of dote and 'tocher, all lands, heritages, debts, and sums of money, heritable or moveable, 'goods and gear, and others whatsoever pertaining or due to her any manner 'of way, &c.' But with the reservation of a power and faculty to her 'to dispose of the sum of 10,000 merks to such person or persons as she should think 'fit.'

And Mary Weir having assigned this 10,000 merks to John Weir her brother; in an action at the instance of a creditor of Mary Weir's, brought after her death, both against John Weir and John Parkhill, the only question being, Which of the two should be found ultimately liable to the creditor? the LORDS found, 'That John Parkhill not having alleged that there were not sufficient effects intromitted with by him to pay the debts and answer the faculty, he was liable to the debts, and also to implement the faculty, to the extent of the subjects received by him.'

No 70.

A disposition *omnium bonorum* by a wife to a husband in a contract of marriage, renders the husband liable to implement all conditions of the grant, *tanquam quilibet*.