

No 145. marriage; but where he does any deed manifestly fraudulent, and having no other tendency but to disappoint the legitim or *jus relictae*, the Court of Session is in use to give relief; Grant *contra* Grant, No 142. p. 5943.; February 1728, Henderson, *voce* LEGITIM. And, 3dly, For the same reason, it seems clear, that the two last bonds taken from Campbell of Ballinaby and Gillies of Duchra, in September 1748, and made payable five days after date, with an evident and most unfair intention of abridging the wife's interest in the moveables, when she was lying *in extremis*, ought to be brought *in computo* of the goods in communion.

Answered for the defender, The creditors and legatees of Alexander Campbell were satisfied with his bills, in place of taking immediate payment of their money. This happened as far back as the year 1744; and the defender did not then dream of any such claim as the pursuers are now insisting in. Supposing no bills had been granted, the legacies and debts of Alexander Campbell, being simply moveable, would still have affected the goods in communion. And with regard to the bonds which the defender got from the several debtors, it was surely a most proper act of administration, to convert debts simply moveable into bonds bearing interest. At the same time, the defender is not bound to account for the reasons of his conduct in this respect. A husband has the sole and unaccountable management of the effects in communion during the marriage; and though he cannot disappoint the wife or children by any settlement to take effect at death, which is all that is proved by the decisions quoted for the pursuer, there is no doubt, that every alienation by him of these goods, or act of management concerning them, while the marriage subsists, is good against every person whatever.

'THE LORDS found the defender liable to account for the two last bonds; and repelled the objection as to the rest.'

Act. *Rob. Campbell & Lockhart.*

Alt. *Ferguson.*

I. C.

Fol. Dic. v. 3. p. 282. Fac. Col. No 223. p. 411.

1763. June 16.

STRACY TILL, &c. *against* ROBERT JAMIESON.

No 146.

An assignment of a debt by a woman to her father, for supporting him in old age, granted before her marriage, though not

A LEGACY of L. 200 Sterling being left to Margaret Jamieson by her uncle John Hamilton merchant in Glasgow, she being in good business as a mantuamaker, assigned the same to her father Robert Jamieson, in order to support him in his old age. The assignment bears date 7th June 1759: and, on the 17th of August the same year, she was enticed into a marriage with Robert Mason linen-draper in Northallerton, who, in a month after the marriage, became bankrupt, and a commission of bankruptcy was issued out against him. The commissioners of bankruptcy executed, as usual, an assignment to the

bankrupt's effects, 22d of October 1759; and the assignment by Margaret Jamieson to her father was not intimated till the 17th of May 1760.

The representatives of John Hamilton, in order to pay safely, brought a multiplepointing against the assignees to the bankrupt husband's effects, and against Robert Jamieson assignee from the wife.'

And the Lords found, 'That the assignment in favour of Robert Jamieson, having been granted and delivered before the marriage, though not intimated, is preferable to the legal assignment by the subsequent marriage.'

This Judgment rests upon two different grounds, both of which were under view of the Court. *Imo*, That the legal assignment by marriage transfers nothing to the husband but what the wife had the free disposal of; and therefore, not any subject made over by her to another, of which she could not dispose, though the legal title remained with her. *2do*, As Margaret Jamieson's assignment to her father bears warrandice from fact and deed, the husband, had the subject been even conveyed to him expressly, must have conveyed it to the assignee, as being liable for his wife's debts.

Sel. Dec. No 206. p. 273.

. See this case as reported in the Faculty Collection, No 84. p. 2858.

1771. December 5.

THOMAS and ANDREW SORLIES *against* ELISABETH ROBERTSON, Relict of PATRICK SORLIE.

IN the year 1720, Patrick Sorlie, the pursuer's uncle, lent to the Duke of Athol the sum of 2000 merks; the security taken was a contract of wadset, by which the sum was taken payable to himself, in liferent; to Patrick Sorlie, the pursuer's eldest brother, in fee; and, in the event of his dying without issue, to the pursuers.

Patrick Sorlie, being in the fee of the loan, called up the money; and in the year 1753 granted a bond, proceeding upon the recital of the destination in the contract of 1720; whereby he bound 'himself and his heirs, in the event of 'his having no children, to pay to the pursuers, his brothers, equally betwixt 'them, their heirs, &c. the sum of 2000 merks, and that against the day after 'his death.' He provided, that his just debts should be preferred to this bond, 'but that no legacy, or claim, or pretension of Elisabeth Robertson his spouse, 'or any of his relations whatever, should have any preference thereto.'

Patrick Sorlie died in 1768, leaving his effects chiefly vested in bills; when a process took place betwixt the brothers and the widow of the deceased; in which the chief question was, Whether or not the above 2000 merks should come off the whole executry before the widow could claim any interest therein

jure relictæ?

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No 146.
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after, was
preferred
before the *jus*
mariti.

No 147.
The power of
a husband
over the
goods in com-
munion does
not authorise
him to exe-
cute a deed,
with the evi-
dent design
of disappoint-
ing the re-
lict's legal
claims.