

1761. *January 12.* CHRISTIAN MONRO *against* WILLIAM MONRO.

No 50.

The wife has retention of her tocher for security of provisions made for her, the husband being bankrupt at the time of the contract of marriage.

By contract of marriage betwixt William Monro and Christian Monro, William provided her in the liferent of the lands of Teanaird, of L. 115 of yearly rent, to take effect at his death; and she conveyed to him *de presenti*, a bond for L. 2853 Scots, due to her by a third party.

At the date of this contract, William Monro was entirely bankrupt; and therefore, before he got payment of his wife's bond of L. 2853, she brought a reduction of her contract of marriage *in toto* upon the head of imposition and lesion.

*Pleaded* for William Monro; The insolvency of the husband at the time of the contract of marriage, will not void the contract itself; the only consequence of it is, to give the wife retention for security of the provisions stipulated for her.

THE LORDS found Christian preferable upon the interest of the tocher for her liferent provision.

Act. *John Dalrymple.*

Alt. *Hamilton-Gordon.*

Clerk, *Justice.*

*J. C.*

*Fol. Dic. v. 4. p. 16. Fac. Col. No 2. p. 4.*

1765. *February 27.* CORRIE *against* MR JAMES PHILP.

10 51.

A WOMAN, upon whom her father had settled a portion by a bond of provision, payable by her brother his heir, having married without a contract, was, after the death of her husband, who died bankrupt, maintained for several years by her brother, who, upon her death, was pursued by the creditors of her husband for payment of the bond of provision. He *pleaded* in defence, That he must be entitled to retain the expense laid out by him in maintaining his sister after her husband's death; for, had she been still alive, she would have been allowed retention, in security of her legal provisions. *Answered*, A woman is only allowed this right of retention when a marriage-contract has intervened; but, when a woman marries without a contract, she betakes herself to the legal provisions, which she can only claim out of the free effects of her husband after his debts are paid. And the same thing applies to the claim of retention for her aliment. *Replied*, Where the woman herself claims retention, it is not equity that this benefit should be limited to those who had entered into marriage-contracts; but, *a fortiori*, it ought to be extended to such as having married without that precaution stand therefore more in need of the law's indulgence.—THE LORDS allowed retention to the brother of the interest which fell due during his sister's life.

*Fol. Dic. v. 4. p. 17. Fac. Col.*

\* \* \* This case is No 10. p. 5772.