

ground, that the claim to an additional share of her father's effects, was a right competent to herself, and not to the husband; and therefore, that the allowing the sum to be taken payable to him, was a donation *inter virum et uxorem*.

No 314.

Answered; After the discharge in Mrs Watson's contract of marriage, she had no right to any farther share of her father's effects. Though, therefore, Mr Watson may be said to have received a donation, it was not received from his wife, but from her brother and sisters. Mrs Watson could not convey to her husband a right which was not in herself; and it is an established principle, that nothing can be considered as a donation, which does not take from the person supposed to make it. See L. 5. § 13. L. 28. § 2. L. 31. § 7. *D. de Donat. int. vir. & ux.*

' THE LORDS found, that as the pursuer, and her deceased husband, in their contract of marriage, accepted of the tocher therein contracted by the pursuer's father, in full of all they could ask of him; so the grant made afterwards to the pursuer, was no other than a donation upon the part of the mother and younger children; and that, as they made it directly to Mr Watson the husband, so he owed it entirely to their generosity, and the regard it would appear they had for him, and not to the pursuer, though her being Mr Watson's wife probably was the origin of the connection; and therefore sustain the defence and assoilzie the defender.'

Act. *Nairne*.Alt. *Blair*.

G. F.

Fac. Col. No 101. p. 357.

1774. June 17.

Mrs BETTY WATSON *against* The HEIR and EXECUTORS of Captain
ALEXANDER GORDON.

JAMES WATSON granted bond for L. 400 Sterling, bearing interest from Martinmas 1749, to his sister Miss Betty, who afterwards intermarried with Captain Alexander Gordon; but there was no marriage contract executed between them.

In 1763, Captain Gordon having taken a resolution to dispose of his commission, and betake himself to half-pay, he accordingly bargained with a Captain upon the Irish establishment, by which Mrs Gordon was secured in a pension of L. 25 *per annum*.

Some time thereafter, the Captain did make a purchase of a small farm which had been offered for sale; it being previously understood, that Mrs Gordon's L. 400 should be given in aid of the price; and accordingly L. 300 of it was got from Mr Watson the debtor, and applied in part to pay the price. The Captain infest himself in the lands, and Mrs Gordon granted an assigna-

No 315.

A wife's assignation to her husband of a sum due to her by bond, to aid him in the purchase of a small estate, and from which, besides a pension as his widow, she enjoys a teice, found revocable as *donatio inter virum et uxorem*.

No 315. tion, which proceeds upon the narrative of love and favour to her husband, of the L. 400 bond aforesaid.

Captain Gordon having died in June 1772, without issue, Mrs Betty Watson, his widow, executed a revocation of the foresaid assignation, granted by her in his favour of the foresaid bond; and she thereafter brought an action of reduction against her husband's heir and nearest in kin, for having the foresaid assignation set aside, as a *donatio inter virum et uxorem*.

On the part of the pursuer, it was *pleaded*; That although a settlement, made by a husband upon a wife, when the same is rational or suitable, is not revocable, even although nothing were given upon the part of the wife for granting thereof, as the husband is at least under a natural obligation to provide for his wife after his death, yet a wife is under no obligation to provide for her husband, or to convey to him any part of her means and effects; and, therefore, where a wife conveys any right to her husband without his making any settlement on his part, in consideration thereof, this the law constructs to be a donation, even although the husband had got no other tocher with her; and the same must be subject to revocation at any time during her life. This doctrine is very clearly laid down by Lord Bankton, B. 1. Tit. 5. § 98. which must be decisive of the present question, as the pursuer's husband, neither at the date of the assignation under challenge, nor at any prior period, had made any settlement or provision to the pursuer.

On the part of the defenders, the following authorities were cited: L. 28. § 2. *D. De don. inter vir. et uxor.*—L. 7. § 2. *eod. tit.*—Voet's Commentary—Stair, B. 1. T. 4. § 18. and Erskine, B. 1. T. 6. § 30. and, from these authorities, the following propositions were laid down; *1mo*, That donations between husband and wife are not always reducible; but that a deed executed by the one in favour of the other will stand good, where any reasonable sort of equivalent had been given on the other side. *2do*, That it does not alter the case, though the deed under reduction bear a narrative of love and favour, providing it can be instructed that a proper remuneration had been given. *3tio*, That it is not necessary that the deed should bear, that it was granted in consideration of what was formerly received from the other party. In short, the nature of the transaction is to be considered; and if it shall appear, that an unreasonable iniquitous deed has been executed, by which the granter has suffered a heavy wrong, it will no doubt be set aside; but if it shall turn out, that any reasonable equivalent has been given, and that there is nothing unequal in the transaction, or that the granter has sustained no great injury, the deed cannot be set aside, though it was granted by one of the married pair in favour of the other.

As to the distinction pleaded by the pursuer between the husband and wife, in this matter of revocation, when the author referred to talks of the unlimited power of revocation competent to the wife, he clearly has in view the case where no remuneratory provision whatever has been made by the husband to

the wife. But it is a mistake, on the part of the pursuer, to say, that she received no valuable consideration from her husband; for not only was the transaction relative to the half-pay finished before the date of the assignation, whereby she was secured in the pension, in the event of her survivance, but she was likewise secured in her terce, by the infestment in the lands, previous to the date of the assignation; and that was no more than a reasonable remuneratory provision, in consideration of those he had so recently made to her. And it is not enough for the wife to say, that the Captain might have disappointed her. If he had done things to produce that effect, either sold the land or the commission, she could have, *eo momento*, put herself in her former condition by a revocation; but as every thing she had in view has been effectual to her, and things are not entire, she cannot now, *bona fide*, take advantage of a revocation where there is no opportunity to restore matters on the other side.

Replied: From the accidents of her husband's particular situation at the time of his death, the pursuer was entitled to an annuity, as a Captain's widow, of L. 25 Sterling, and about L. 14 Sterling yearly, as the amount of her terce; but neither the one nor the other did arise from any settlement of her husband, but devolved upon her merely by the act of the law. She had no sort of security either for the one or the other; for, as to her husband's moveables, they were no more than sufficient for payment of his debts. On the other hand, the pursuer's husband got no less by her than L. 100 Sterling yearly for the space of ten years, being an annuity settled upon her by her brother, besides paying her husband's commission; so that the foresaid particulars are but a poor recompense for the funds which Captain Gordon got by the pursuer, independent of the sum contained in the assignation now under challenge.

The LORD ORDINARY 'sustained the reason of reduction of the assignation as being a *donatio inter virum et uxorem*.'

To which the COURT, on a reclaiming bill and answers, 'adhered.'

Act. Macqueen.

Alt. L. Advocate.

Clerk, Ross.

Fol. Dic. v. 3. p. 286. Fac. Col. No 114. p. 305.