

No 347.

A husband getting addition of means belonging to his wife, may grant a remuneratory donation, which he cannot revoke.

1664. February 13. COUNTESS of OXFORD against The VISCOUNT.

THE Viscountess of Oxenford pursues the tenants of the mains of Cranstoun M'Gill for payment of the duties ; compearance is made for the Viscount her son, who *alleges*, No process upon the pursuer's sasine, because it is but the assertion of a notary. And as to the charter, which is the ground thereof, it is for no onerous cause, but a mere donation betwixt man and wife, which her husband might revoke, and did revoke by cancelling his subscription from it ; likeas, the charter was never delivered, but kept by him till he cancelled it. It was *answered*, That the foresaid right is not a mere donation ; but after her husband was married to the young noble Lady, having received a competent tocher, and only provided her out of his great fortune, to 2500 merks yearly, she fell, by decease of her brother Kilsyth, to 8000 merks, which her husband got ; and though the charter did not relate thereto, yet it was dated after, and must be interpreted *donatio remuneratoria*, of that which he *lucratus erat* by that accretion ; neither can the cancelling thereof, or the not-delivery, be obtruded, because the charter being made perfect by sasine, and her husband's Bailie, haver of the charter, having given to her attorney tradition and possession by earth and stone, the charter became then her evident, and could not be cancelled to her prejudice. To this, the charter was opposed, bearing only for love and favour ; and by her contract of marriage she did assign to her husband what should befall to her by the death of her brother ; and the provision therein mentioned was nevertheless in contentation of all she could acclaim, unless what he pleased to bestow upon her.

THE LORDS repelled the allegiance and reply in respect of the answer ; and found the right remuneratory, notwithstanding the contract, wherein they did consider the meanness of her provision, and the plentifulness of her son's fortune, as a great motive of the decision. *Me tamen renitente. In presentia.*

Fol. Dic. v. 1. p. 411. Gilmour, No 93. p. 71.

* * * The like was decided 11th July 1735, Creditors of Brownlee against His Relict. See APPENDIX.

1664. November 23. HALYBURTON against PORTEOUS.

No 348.

A second provision by a husband to his wife, was reduced, the wife not being able to

HALYBURTON having married a widow in the Potter-row, there was no contract of marriage betwixt them, but he gave her first an infestment in all the lands he had, the time of the infestment, and thereafter he gave her a second obligation, providing certain lands to him and her, and the heirs betwixt them ; which failing, to divide betwixt their heirs ; her heirs pursuing to fulfil this