

*non operantur ultra eorum intentionem.* But here the suspender's design was not to discharge the back-bond; but only to borrow money for supplying his present necessity; and to repay, if Mr. Fead's occasions should peremptorily call for it, before recovering payment of Ewing's bill: whereas, at the same time, Mr. Ewart knew that Fead's obligation to hold count was still effectual to him, either for pursuing payment of the sum therein-contained, or to compensate the bond charged upon. Nor is it of any moment, that Ewart granted the bond for borrowed money after the date of Fead's back-bond; for, in every compensation almost, the one debt is contracted before the other: and a charge upon a bond granted to one who was debtor to the granter by a former bond, hinders not the debtor in the last bond, either to compensate or charge for payment upon the first, as he thinks fit.

The Lords having considered Ewart's letters, find that Mr. Fead acted warrantably in remitting the money; Ewing being held and reputed in good condition, and solvent, the time of the draught; and, therefore, repelled the compensation.

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1705. *July 14.* NICOL SOMERVELL, Writer in Edinburgh, *against* JOHN DUNDAS, Advocate, and NINIAN ANDERSON, Merchant in Edinburgh.

MARGARET ABERCROMBIE, having disposed her whole estate to Nicol Somervell, her husband; and delivered, on her death-bed, L.100 Scots to a trustee, to be given to Mr. John Dundas, and Ninian Anderson, which they received the day after her decease: Nicol, the husband, pursued the legatars for repetition of the money, upon this ground, that what was lying by his wife, belonged to him *jure mariti*, and could not be disposed of without his consent.

ANSWERED.—Margaret Abercrombie, the testatrix, leaving a considerable estate to the pursuer, in bonds bearing annual-rent, which fell not under the *jus mariti*, she might have burdened the same with legacies at her pleasure, which he would have found himself obliged to make effectual; and, therefore, he cannot repeat so small a compliment, actually delivered to the defenders by the defunct's order.

The Lords' assoilyied the defenders, and found them not liable to refund the L. 100.

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1705. *July 20.* ALEXANDER ALISON, *Supplicant.*

ALEXANDER ALISON, writer to the signet, as tacksman of the estate of Halkertoun, set to him by the Lords of Session, being put to for the proportion imposed upon that estate, for repairing the parish church that was ruinous,—applied by a bill to the Lords for a warrant to pay,—Craving, they would declare either