

S E C T. II.

Whether deeds betwixt Husband and Wife, where there are clauses favour of third parties are revocable, although gratuitous.

No 316. 1591. December. LAIRD OF HISLEID *against* LINDSAY.

THE Laird of H. pursued Robert Lindsay of _____, spouse to Elizabeth Semple, Lady Knockdol, for payment of a certain sum of money, *alleging*, That the said Robert had obliged him to his said spouse to pay the said sums and debts, which were owing by her and her former husband to sundry and diverse persons, as a ticket of the same, subscribed by the said Robert, bears. *Answered*, That the pursuer could have no action by virtue of the said obligation to pursue; because *fuit contractus inter maritum et uxorem, et quasi alienatio, quæ non tenent de jure*; and therefore the defender could not be obliged, by virtue of the said contract that was null of itself, to pay a thing to a third person. It was *answered*, That in so far as the said obligation was made in favours of the third person, to pay the debts contracted by the wife, and that the husband was to receive great sums of money by the marriage of the wife, the obligation was lawful, and ought to take effect. THE LORDS found the obligation was sufficient to give a title to the creditor to pursue the defender.

Fol. Dic. v. I. p. 409. Colvil, MS. p. 464.

* * See Spottiswood's report of this case, No 300. p. 6087.

No 317.

A bond taken by a man to himself and his wife in liferent, and to her heirs in fee, found revocable *quoad* the wife's heirs, as well as herself.

1634. March 22. GLASFORD *against* DAWLING.

ONE Glasford, Clerk of Leith, married upon one Dawling, gives out 1000 merks upon an heritable obligation, 'To himself and to his wife, and to the longest liver of them two in liferent, and to the heirs of the wife after her decease.' The wife being deceased, and the debtor suspending upon double pointing, against the husband on the one part, and Robert Dawling, brother's son and heir to the wife on the other part; and they being both heard anent their right to the said sum; the LORDS found, That the husband had the only right to the said sum, and that the same pertained to him heritably, and not to the heir of the wife; because the LORDS respected the bond of the tenor fore-said, as *donatio facta a viro uxori*, and so that it was revocable, likeas he had revoked the same; and therefore, the destination of payment appointed to the wife's heirs by the bond, could not take effect against the husband's will, revoking the same; neither was it respected what the heir of the wife alleged,