

they had covenanted as for the Lady's liferent, so for the issue of the marriage, it was thought just, that since there was a shortcoming of the funds, which he had averred himself to be possessed of, the deficiency should rather land upon the reservations he had made for himself and his other children, than upon the daughters of the marriage; and it was thought that the like plea might have lain to the son John Hogg younger himself, that the reserved liferent, faculties and burdens, had been submitted to on supposal of a full estate, such as was given out, which therefore could not be claimed without making good the fund out of which they were to be paid. See No 4. p. 1390.

*Kilkerran, (FRAUD.) No 5. p. 218.*

No 6.

1785. June 21.

JEAN LISK, and her *Curator ad litem*, against Her HUSBAND and his CREDITORS:

JEAN LISK, who enjoyed from a former husband a terce yielding annually L. 600, was courted by a gentleman pretending to be possessed of a free landed estate of L. 240 per annum. By the marriage articles, the whole effects belonging to the parties were to accrue to the survivor, Mrs Lisk at the same time having it in her power, in case of her predecease, 'to burden the subjects 'in communion, *etiam in articulo mortis*, to the extent of what she brought 'with her.'

Instead of being in a condition to fulfil the above-mentioned agreement, Mrs Lisk's husband, at the time of the marriage, was irretrievably bankrupt. A sequestration of his effects soon took place; when she brought an action against him, and the trustee for his creditors, for having it found, that he had no right to the rents of her terce-lands. It could not well be said, that the marriage-contract contained an express exclusion of the *jus mariti*; but Mrs Lisk offered to prove its having been her expectation, and that of her friends, that she was to enjoy her estate independent of her husband; from which, joined to the deception practised with regard to his situation in point of fortune, she

*Pleaded*; The matrimonial engagement, so far as relates to the union of the married persons, is indeed indissoluble from considerations of a pecuniary nature. In its effects, however, on the estates and property of the parties, it is to be viewed as an ordinary contract, and to be regulated by those principles of justice which influence other agreements. Where these have been brought about by fraud, it is the province of courts of equity to give relief, by annulling, them; or where a mere voidance would not afford an adequate reparation, by imparting that effect to the contract which the injured party was induced to expect from it; Dict. *voce* Fraud; Principles of Equity, b. 1. c. 1. § 1. 2.; Bacon's Abridgment, *voce* Fraud.

No 7.

A woman induced by fraud to marry an insolvent person, not entitled to withdraw her effects from the *jus mariti* of her husband.

No 7.

The pursuer, in the present case, could receive no advantage from annulling the marriage-articles, the marital rights being alone sufficient to transfer to her husband the whole produce of her estate. But as the marriage itself was occasioned by gross imposition on his part, and as it arose from the same cause, that the marriage-settlement did not secure to her, as he gave her reason to expect, the unlimited administration of her own funds, he ought, as the only remaining method of redress, to be excluded from every participation of them.

Neither can the intervention of creditors create any difference in the present argument. A husband's interest in his wife's estate, being in its nature strictly personal, the same exceptions which would have been available against him, must be equally competent against those who, by the operation of legal diligence, are brought into his place. In questions of fraud, especially, their situation never can be better than his; because, by taking advantage of his wrong, they become accessories to it, and obliged, in the same manner with their principal, to indemnify the suffering party; Sir Archibald Grant *contra* The Creditors of Tilliefour, No 71. p. 949.

*Answered*; It is the union of the married pair, which, in the understanding of law, is the essential object of the nuptial connection. The advantages of wealth, as well as those of rank or superior qualities of mind, are only accidental appendages to that union; nor can the disappointment, or even the deception of either of the parties, with regard to them, detract from its validity, or alter in any respect its legal consequences; *Reg. Maj.* book 2. c. 16.; *Quoniam Atachiamenta*, c. 20. 21. 22.; Balf. Pract. p. 111.; Stair, book 1. 4. 9.; Erskine, b. 1. tit. 6. § 13.

Neither does the marriage-contract give any support to the present action. Had an exclusion of the *jus mariti* been actually agreed on, the fraud of the husband executing the deed in the terms here used, might have been redressed in equity, as, without a rigid adherence to words, stipulations may be construed or enforced according to their true meaning; but it belongs to the legislative authority alone to substitute, instead of the covenant of parties, another essentially different, or to supply such defects in the execution of contracts, as render them in peculiar contingencies ineffectual for the purposes for which they may have been designed. The pursuer's situation is analagous to that of a creditor who has lent his money to a bankrupt on a personal bond, when, by requiring landed security, he might have recovered the debt; or who, from his having relied on an informal document, is not allowed to compete with other creditors; cases in which the wrong committed by the debtor admits of no remedy.

Another question likewise occurred, but did not then receive a determination, How far the pursuer, if not enabled to withdraw her estate altogether, was, nevertheless, in the circumstances of the case, entitled to a reasonable aliment out of it during the subsistence of the marriage?

THE LORDS, by a great majority, found, " That the creditors were not barred from affecting the rents of the terce-lands belonging to the pursuer, and falling under her husband's *jus mariti*."

No 7.

Lord Reporter, *Ankerville*.  
Campbell, *Abercromby*.

Act. *Wight, H. Erskine*.

Alt. Lord Advocate

Clerk, *Orme*.

C.

*Fol. Dic. v. 3. p. 244. Fac. Col. No 212. p. 331.*

## S E C T. II.

## False Representation.

1670. February 9.

JOHN SCOT against ALEXANDER CHEISLY and DAVID THOMSON.

JOHN SCOT pursues a declarator of circumvention against Alexander Cheisly and David Thomson, bearing, that Alexander Cheisly having a process against the Magistrates of Glasgow, for alleged hindering the executing of a decreet, and imprisoning him; and being in an evil condition in his means, he proposed to the said John Scot, his good-brother, that he must make use of his name as assignee to that process, lest his creditors might affect any thing that might be obtained thereby; and that John Scot should give a back-bond, declaring that his name was put in the assignation upon trust. Instead of which back-bond, he caused draw up a bond, bearing that for so much as Alexander Cheisly had assigned John Scot to a process against the Town of Glasgow, therefore and for other good causes and considerations, John Scot obliges him to pay to a blank person 3850 merks; in which bond, Alexander Cheisly filled up David Thomson's name; and which bond was obtained by Alexander Cheisly by gross circumvention upon the absolute trust the said John Scot reposed upon the said Alexander; for clearing whereof, he condescends on these points, viz. that the said John Scot was good-brother to the said Alexander Cheisly, had been his apprentice, and the said Alexander was his curator; and, the said John Scot is known to be a simple person, and the said Alexander Cheisly to be a subtle person, ready to take advantage; likeas, it is evident, that he did take advantage of the said John Scot, about that same time, pretending that he was more able to act in John Scot's affairs than himself, he procured assignation from John Scot, to bonds of 28,000 merks, and put in the assignation a clause of absolute warrandice; albeit by a back-bond of the same date, it be clear that the assign-

No 8.

Circumvention found instructed, not only against the circumventer who obtained a bond blank in the creditor's name, but also against a third party whose name was filled in the blank; who acknowledged that at the time the bond was delivered to him and his name filled up as creditor, the circumventer did not owe him a sum equivalent to that in the bond.