

No 217.

momenti, et ubi requiritur scriptura, it is necessary to have the consent of the husband, and unto the giving of discharges and acquittances.—THE LORDS, after long reasoning, repelled the reasons of the summons, and found, by interlocutor, that a wife might not give acquittances and discharges, without the advice and consent of her husband, *quia vir est caput uxoris, et de jure nostro, durante matrimonio, maritus est dominus omnium bonorum.*

Fol. Dic. v. 1. p. 403. Colville, MS. p. 330.

No 218.

1587. *June* LAIRD OF PITTAROW *against* his TENANT.

THE LAIRD of Pittarow warned a tenant to flit and remove from certain lands. It was excepted that since the warning the Lady being *præposita negotiis familiae*, had received from the defender three hogs as duty of the ground. *Answered*, that the allegiance was not relevant, except he would say that the lady had received the same at the command of the Laird her husband; and so found by the Lords.

Fol. Dic. v. 1. p. 403. Colvil, MS. p. 417.

1622. *March 16.*MACMATH *against* HOME.

No 219.

A person having borrowed money from a wife, and given his obligation, was found *in tuto* to repay the sum to the wife and retire his obligation, though he was informed by the husband that the money was his.

SIR GEORGE HOME was pursued by William Macmath, to make payment to him of a certain sum of money, alleged borrowed by the said Sir George from Janet Nisbet, spouse to the said William Macmath, whereupon he had given to her his obligation, and which the said William alleged he had intimated to the said Sir George, while he remained debtor in the said sum; and this summons was referred to Sir George his oath, who granted the borrowing of the sum from the said pursuer's wife, and that he had given her his obligation thereupon, and that William Macmath acquainted him therewith, and desired him to take order for the same before he had repaid the sum; but he declared, that thereafter he had paid the sum to the pursuers wife, to whom he was bound by his bond, and retired his own bond again out of her hands, &c. which payment made to the wife, the LORDS sustained, and assolizied the defender from the husband's pursuit.

The like was done 19th July, 1634. betwixt Guthrie, cook in Edinburgh, and Betson of Cardin; where upon a bond and inhibition delivered by the creditor's wife to the debtor, who had payed a part of the debt to the wife, for

the rendering the same to him, it was not sustained to free the debtor at the Creditors hands, viz. the husband who knew not of the delivery. No 219.

Fol. Dic. v. 1. p. 403. Durie, p. 22.

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Alt. *Nicolson* younger.

Clerk *Scot.*

1628. February 2.

MARGARET SCOT against JAMES WEILL and KATHARINE BANKS.

No 220.

MARGARET SCOTT relict of umquhile Mr Robert Stevin, pursued James Weill and Katharine Banks his spouse, for the violent spuilzieing of her goods insight, and plenishing out of her house. *Aledged* for James Weill, that he could not be convened for the said spulzie, because he was out of the country in the mean time, and so neither privy nor accessory to it. *Replied*, that he ought to be answerable for his wife's deed, otherwise the inconveniency would be great. THE LORDS found the exception relevant.

Spotswood, p. 156.

. Durie reports the same case :

In a spuilzie by one Scot relict of Mr Robert Stevin against Katharine Banks and James Weill her husband, which was restricted to wrongous intromission, and no spuilzie sought, the LORDS found, that the deed of wrongous intromission done by the wife without command of the husband, was not effectual to produce action against the husband, he not being accessory thereto, albeit the wife had medled with the goods violently, and had dispoined thereupon at her pleasure, and albeit the husband thereafter getting knowledge of the fact done by her, and of her dispoining thereof, and after the citation used also by the pursuer against him, did never express any act, by the which he made it manifest, that he disliked that fact, and disallowed thereof; and so albeit the pursuer replied, that the fact of the wife's intromission being done in the express name of her husband, and by her husband's right, viz. by a poinding, deduced at his instance, for debt owing to him, which was found unlawful, yet he thereafter making no expression, neither to the party, nor to the Magistrate of the town where he dwelt, nor to the officer deducer of the poinding, nor to any other person, to show that he was not accessory to that fact, which he ought to have done, if he had intended to have been freed thereof and which the pursuer alleged to be an express ratihabition, and so that he was subject to the hazard of the fact, albeit it were true, that he was not within the country at the very time of the act done by his wife, as he alleged; for it were of dangerous consequence, to give liberty to women clad with husbands to commit such wrongs, and that