

No 276. against her *stante matrimonio*, to be lawful. *Item*, they fand ane horning executed against her at the instance of ane \_\_\_\_\_, upon a decret recovered against her *principaliter*, and against her husband for his interest, null, because, *stante matrimonio*, execution could not follow against her, but against her husband.

*Fol. Dic. v. I. p. 408. Kerse, MS. fol. 64.*

\* \* Haddington reports the same case :

ANE horning executed against the Countess of Orkney, for not finding law-surety, was sustained, albeit her husband was not charged, albeit though alleged that she could not find caution *stante matrimonia*, not being able to give a sufficient bond of relief without her husband ; nevertheless the horning was sustained, as proceeding upon her disobedience ; and her liferent decerned to fall by that horning at the insance of her oye her superior.

*Haddington, MS. No 2520.*

No 277. 1614. November 16. MELVILLE against LINDSAY.

IN an action pursued by Sir Andrew Melville *contra* Dame Agnes Lindsay, relict of Mr David Melville of Tunghlands, it was found that the said Dame Agnes ought to give her oath, notwithstanding she stood married to William Bruce of Escheall, and that because the process was intented before the marriage.

This was an oath of calumny.

*Kerse, MS. fol. 64.*

No 278. 1628. March 22: SCOT against CHISHOLM.

WALTER SCOT (assignee constitute by Mr Patrick Shaw to a bond made by umquhile Gavin Elliot of Burgh, and Margaret Chisholm his spouse, whereby they were obliged to infest Mr Patrick in an annualrent of 300 merks out of their lands of Burgh, &c.) charged Margaret Chisholm, relict of Gavin, to pay the said annualrent since the date of the bond. She suspended upon this reason, that the time of subscribing the bond she was clothed with a husband, and did it *ex metu et reverentia maritali*, and therefore there should no personal execution follow upon it against her. *Alleged*, The letters ought to be found orderly proceeded, because she being infest in these same lands out of which the annualrent was due, and that not by virtue of a contract of marriage, but long thereafter, she has possessed the same continually since, and uplifted the duties thereof, and therefore she ought to pay the said annualrent wherein the charger was infest with her consent, which was a tacit revocation of her infestment.

THE LORDS found that she should pay the said annualrent during her possession of the said lands. No<sup>r</sup> 278.

*Spottiswood, (HUSBAND and WIFE.) p. 156.*

\* \* \* See Durie's report of this case, No 11. p. 1729.

1630. November 20.

RUTHERFORD *against* HALCRO.

No 279.

IN a suspension of a bond of L. 48, made by Halcro to Rutherford, because it was made by a woman, *stante matrimonio*, with the husband's consent, so that if any execution should be thereon, it ought to be against the husband's executors, and not against her, the LORDS sustained the charges against the relict, maker of the bond, because it was offered to be proved by the relict's own oath, that the bond was given for aliment furnished to her, she being here employed in doing of her husband's affairs, and for supply of her necessity; which the LORDS sustained, and found it not necessary that the charger should pursue the husband's heirs or executors therefor, but reserved action to the relict to seek her relief against them for the same *prout de jure*.

*Durie, p. 540.*

1631. January 29.

PORTER *against* LAW.

No 280.

A RELICT being charged to pay a sum, which she, and her husband with her, were obliged to pay to the creditor; and she *alleging*, that the obligation being made by her with her husband *stante matrimonio*, no execution now after his decease could follow against her, but only against her husband's heirs or executors, the LORDS found the reason relevant, seeing the relict was not obliged in law to pay the same, albeit the charger *answered*, That she was also bound, and that she was *præposita negotiis* also by the husband, which *præpositura* the LORDS found made not the relict obliged; but would infer, that albeit the husband had not been bound in the bond, as he indeed was, yet the husband's heirs and executors were convenable therefor, and not the relict; for that prepositure made the husband liable to the debt.

Act. *Cunninghamc.*

Alt. *Lermonth.*

Clerk, *Scot.*

*Durie, p. 561.*

1633. February 16.

STUART *against* BANNERMAN.

No 281.

A DECREET of ejection being obtained at the instance of William Kairney, against umquhile Robert Stuart and Christian Bannerman his spouse, for eject-

A horning a-  
gainst a wife.  
*vestita viro.*