

No 239. whereof the said Robert moved action, as done in his defraud, and unlawfully, after that he was in effect her husband, without his consent; which summons the LORDS found relevant, and declared the said dispositions and renunciations null.

Fol. Dic. v. 1. p. 404. Haddington MS. v. 2. No 2261.

No 240. 1633. Jan. 29. SCOT against BROWN.

A BOND made by Mary Hamilton, before her marriage with Scott, her spouse, but after she was proclaimed with her said spouse, found null and of no force to bind her husband, more than the said bond had been given *stante matrimonio*.

Fol. Dic. v. 1. p. 404. Auchinleck MS. p. 17.

* * * See Durie's Report of this Case, No 24. p. 2710.

* * * Spottiswood reports the same case.

1633. Jan. 22. THE LORDS would not find process upon a bond granted by a woman after she was contracted and proclaimed upon her husband. Margaret Scott against Brown and her debtors. The like had been found twice before.

Spottiswood, v. 1. p. 159.

No 241. 1665. December. The Lady BUTE, against her Son, The SHERIFF of BUTE.

DAME GRISSEL CAMPBELL, relict of the sheriff of Bute, after she was contracted in marriage with Mr Archibald Grahame, now her second husband, and after she was proclaimed with him in the parish kirk, granted a renunciation of a part of her liferent lands; in favour of her son, this sheriff, (the rest unrenounced, being but very mean), whereof she, with consent of her husband, intents reduction upon this reason, That she could do no deed, after she was contracted and proclaimed, without her husband's consent, no more than if she had done it the time of the marriage.

Which the LORDS found relevant, notwithstanding of any thing alleged to the contrary; and specially, That her husband, before the solemnization of the marriage, knew of the granting of the renunciation, and said nor did nothing against the same.

Fol. Dic. v. 1. p. 405. Gilmour, No 171. p. 122.

* * * Stair reports the same case.

No 241.

1666. Jan. 5. THE Lady Bute and her husband pursue a reduction of a right of a part of her conjunct-fee, made in favours of her son, upon this ground, that it was done after her contract of marriage with her present husband, and public proclamation in the kirk thereupon. It was *answered*; *first*, That once proclamation was not sufficient; *2dly*, That it was offered to be proved that the husband knew that the right was granted, and yet he proceeded in the proclamation and marriage, which behoved to proport his acquiescence and consent; and alleged likewise the case was most favourable, because the lady had married, unsuitably, her husband's chaplain. It was *answered* for the pursuer, that once proclamation is sufficient, as has been several times found, and that there is no weight to be laid upon her husband's knowledge, who knew he had a remedy competent in law, whereby the deed done by his wife after the contract and proclamation, would be null; and so his going on in the marriage did not infer his acquiescence or homologation: And as for the favour of the cause, it is much more on the pursuer's part, who being provided by her husband to 27 chalders of victual, had, before the contract of marriage, quit 20 to her son; and of the seven remaining, he had urged her to quit 100 lb. and seven bolls of victual were only now in question.

THE LORDS found the reason of reduction relevant, and repelled the defence upon the husband's knowledge; for they thought that as deeds of a wife clad with a husband, without his consent, are null, after the solemnization of the marriage, because she is then *in potestate viri, et sub ejus tutela*; so that she is truly wife, after the contract of marriage becoming public by proclamation; and it occurring as a doubt amongst the Lords, whether the reduction ought to be sustained at the instance of the husband only, in so far as concerned his interest *jure mariti*; so that the right might be valid against the lady, if she survived.

THE LORDS sustained the reason simply, at the instance of both, and found it null as to both, as being done without her husband's consent.

Stair, v. 1. p. 333.

* * * This case is also reported by Dirleton.

THE Lady Bute, Dame Grissel Campbel, being contracted and proclaimed with Mr James Grahame; in the *interim* before her marriage, was induced, (and, as she pretended, forced) to grant a disposition, and discharge of a part of her jointure in favour of her son, the sheriff of Bute; he having, after the first proclamation of their banns, stopped any further proceeding until he extorted the said deeds.

No 241.

THE LORDS (in a reduction of the said deeds at the instance of the lady and her husband), found, that *post sponsalia* and *banna*, she was not *sui juris*, and could do no deed in prejudice either of her husband or herself, without his consent, and that she was in the same condition as if she was married: And therefore the LORDS found the reasons relevant for reducing the said rights, both as to her husband and herself.

It was *alleged*, that the husband had consented, in so far as after the said deeds were done, he knew the same, and yet proceeded to marry. THE LORDS repelled the allegiance.

Dirleton, No 13. p. 7.

No 242.

A gratuitous discharge of the bygone annualrents of a bond, after proclamation of banns, was not sustained in prejudice of the husband.

1682. *March.*GILCHRIST and GRANT *against* PRINGLE.

ROBERT PRINGLE and Bessie Crichton, being debtors by bond to Bessie Gilchrist, in the sum of 400 merks, bearing annualrent, whereupon the said Robert Pringle being charged at the instance of the said Bessie Gilchrist and John Grant her husband for his interest, he suspended upon this reason, that the said Elizabeth Gilchrist, the wife, had discharged all the annualrents preceding Martinmas 1681, before the marriage. *Answered*, that no respect ought to be had to the discharge, because it was granted after proclamation of the marriage, as appears by a certificate under the hands of the minister and elders; and by the constant practice such discharges are not sustained in prejudice of the husband, and was particularly decided, Scott against Brown, No 240. p. 6030. M'Dougal against Aitkin, Haddington, MS. No 236. p. 6027., albeit the proclamation was made at the husband's parish church; and the like was decided in the case of a disposition in favour of the wife's children, after a proclamation, Fletcher, No 239. p. 6029. THE LORDS repelled the reason of suspension founded upon the discharge of the annualrents, because the same was after proclamation, albeit before contract or marriage.

1682. *November.* IN the action at the instance of John Grant and Elizabeth Gilchrist, his spouse, against Robert Pringle, mentioned the day of March last, the said Robert Pringle, suspender, having craved allowance of certain clothes and household furniture that he delivered to her when she was married, and for alimending her the space of seven or eight years before she was married; *answered*, that the price of the clothes and household furniture is not competent *hoc loco*, being neither liquid nor verified; and albeit the same were instructed, yet it ought not to be allowed, because the suspender's wife, with his knowledge, did gift these clothes and household furniture to the charger's wife when she was married, in so far as it is offered to be proved that the suspender sent his own horse, cart, and servants, to carry the furniture to the