

to the *second*, the pursuer's title as heir not being controverted, the decret was good ; likeas, yet, they are content t^o conform.

The Lords, having advised the bill and answers, and finding, That Mr John Ellis, who was made advocate, compearing, disclaimed the same ; did repone Kirkonnell as being minor the time of the decret, and out of the country, that he might yet renounce to be heir, to the effect that Kirkonnell's estate, who was a debtor, might be affected by an adjudication : but found, that minority and lesion was sufficient to secure him against personal execution, or burdening of any other estate, who had them from the debtor, notwithstanding the decret was *in foro*, and extracted, and after litiscontestation ; and so they ordained, after confirmation, Baxter and his assignee to extract a decret for that effect.

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1676. July 25. MARION DODS, and DAVID DICK, her Husband, *against* NINEAN HOME.

JAMES Scott, in his contract of marriage with Marion Dods, being obliged to provide her to the liferent of the annualrent of all sums of money he should conquest during the marriage ; after the death of the first husband, she having married David Dick, she did pursue Ninean Home, as being debtor to her deceased husband in the sum of 1000 merks, for payment of the annualrent thereof to her during her lifetime.

AS WAS ALLEGED, the defunct, James Scott, did leave the half of the said principal sum to the defender in legacy, which was so acknowledged by the said Marion Dods, his relict, that she, being executrix-creditrrix to her deceased husband, did only give up and confirm 500 merks, as only due of the said bond. *2d.* He ought to have compensation ; because the said James Scott, as factor for the said Ninean, did uplift sums of money due to him, extending to the sums craved.

It was REPLIED to the *first*, That the bond being heritable, and the said Marion creditrix by her contract of marriage, could not be prejudged by any legacy : and for giving up an inventory, the time of the confirmation, of a less sum than was truly due, cannot prejudice her ; seeing she might have eiked the same.

It was REPLIED to the *second*, That there can be no compensation ; because she, being provided by contract to all sums due to her husband, compensation is only receivable against the heirs who may be distressed for payment, but cannot meet her ; who is a lawful creditor to the defender by her contract of marriage.

The Lords did find, That the legacy, or confirmation of the testament, could not prejudge the wife of the benefit of the contract of marriage, whereby she was a lawful creditrix ; and so they repelled the defence : but, as to the compensation, they did sustain the same ; and found, That a husband getting a bond from a debtor, and being satisfied by intromission, or become debtor for as much as would compensate the debt during the marriage, that would compensate.

and militate against the wife as well as against the heir; seeing the debtor did know nothing of the wife's interest, and was only bound to the husband, whom he might intrust to intromit with what was his, upon that assurance, that it would pay his own debt due by bond.

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1676. July 25. WILLIAM WRIGHT *against* GEORGE SHEILL.

In a removing, pursued at William Wright's instance, as being infeft upon a comprising in some tenements of land in Leith, wherein George Sheill being likewise infeft, and also pursuing for maills and duties, both causes being advocated;—it was ALLEGED for George Sheill, That he ought to be preferred; because his comprising was at his instance, as assignee constituted by John Sheill in Carlourie, to several debts due by John Sheill in Leith to him; and thereupon having obtained decret, the same was suspended upon compensation, in so far as the said William Wright, cedent, was debtor, by contract of marriage and other bonds, in as much as the sums contained in the comprising; and so in law did extinguish that debt, and the comprising led therefor.

It was ANSWERED, That the compensation could not be now received after sentence; being contrary to the 141st Act, Parl. 12, James VI, and comprising following thereupon, which is now expired.

It was REPLIED, That the decret being for null defence, and suspension raised upon that same reason of compensation, which hath never been distrusted, may be here repelled, as not falling within the Act of Parliament.

The Lords did prefer the compriser; and found, That, after a decret and fifteen years' possession of an expired comprising, compensation could not be received in a real action of removing, or for maills and duties; but prejudice to George Sheill, who was heir to John Sheill, for whose debt the land was comprised, to be reponed against the decret, whensoever he should pursue a declarator of reduction upon the grounds of compensation.

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1676. July 26. KINLOCH of GOURDIE *against* STRACHAN.

IN an action at Gourdie's instance, as being infeft in Strachan's lands for security of debts, compearance was made for the relict, who craved to be preferred; because, besides her provision by contract of marriage, she was likewise infeft in remuneration of a legacy left to her during the marriage; because it did accresce to the husband, and so was valid in law, being for a just and onerous cause.

It was REPLIED, That, after marriage, all legacies and moveables which fall to the wife by right of succession, *ipso jure* belong to the husband; for which he is not in the least obliged to grant any remuneration; and, if he grant the