

1677. June 26. ANENT A BASE SEASINE OF WARD LANDS.

IT was inquired, if a base seasine of ward lands, taken on a mandate or precept of seasine, given by a party when he is *in lecto*, can import recognition? *Videtur quod non*; because the warrant of the seasine is null in law, being on death-bed; and Craig, *Feud.* p. 344, tells of a decision, by which the Lords found a seasine, null for want of registration, could not infer recognition. Yet I think the Lords would not decide thus now. See M'Keinzie's Pleadings, p. 58. *Vide infra*, No. 590. [*Grant against Mackenzie, 6th July, 1677.*] Besides, neither want of registration, nor deeds *in lecto*, are such intrinsic nullities but they are valid till quarrelled.

Advocates' MS. No. 580, § 3, folio 289.

1677. June 26. JOHN DICKSONE *against* BESSY SHORT.

ONE Bessy Short and her husband having granted a bond for a certain sum of money to one John Dickson, tailor in the Potterrow of Edinburgh; many years after the husband's death, she, being charged to pay the sum, suspended and raised reduction on this ground, that the bond was *ipso jure* null, being granted by a woman clad with a husband, and could never affect her, being *tuta exceptione Senatus-consulti Velleiani*, but only her husband's representatives. Whereunto I ANSWERED for Dickson, the charger, that she behoved still to be liable, notwithstanding her revocation, because she since her husband's decease has acknowledged the debt, and taken it upon her, and homologated and ratified the bond, in so far as she has paid sundry years annualrents of it since his death; and as a minor may preclude himself of the benefit of restitution *in integrum* against deeds done to his lesion in his minority, by ratifying the same either expressly or implicitly, by paying annualrent, (as has been decided,—See Dury, *penult. July, 1630, Johnstoun,*) so may a woman when she becomes a free person.

REPLIED,—There is a great disparity, for a minor's obligation is not *ipso jure* null, but a married woman's is; *et non-ens nequit ratificari, nam non datur cui accedat.*

DUPLIED,—The obligation of a minor wanting curators is *ipso jure* null, and yet he may ratify it.

This being taken to interlocutor, the Lords, before answer, ordained her to produce the discharges of the annualrents paid; to the effect they might advise and consider, *quo animo*, she paid it, whether *se obligandi* or *ex errore*, for *ignorantia juris in muliere est excusabilis, L. D. de juris et facti ignorantia*; and this in regard it was alleged, that what she had paid was out of mere simplicity and ignorance, not knowing she was not obliged.

Then the charger, *2do, et separatim*, ANSWERED, She ought still to be liable, because he offered him to prove the debt contained in the bond charged on was originally her own before the marriage, and that her husband only *pro interesse* granted this bond; and so she was *in lucro captando*, not *in damno vitando*. *3tio*, That she was executor or intromitter with her husband's goods.

Both thir were found relevant, *per se*, and referred to her oath; and she neither