

*Replied* for the pursuers, *1mo*, that they pretend not to do diligence upon the wife's personal obligation in the bond, but to prosecute the real right given them by both husband and wife; and though the personal obligation be null, yet that cannot stop this real execution, to which she consented. *2do*, An heritable bond in its ordinary stile, and the infestment of annualrent in the legal effect thereof bears an assignation to the mails and duties of the tenement; so that the liferenter cannot stop the pursuers getting payment of all their bygone annualrents; as to which, this action for mails and duties has the same effect with a process for pointing of the ground. And the LORDS have found, that an annualrenter, who is an adjudger, may use the one or other action at his pleasure, and that they will have one and the same privilege and effect; for the pursuer's adjudication is not founded only upon the personal obligation in the bond, but proceeds upon the whole obligations, and obtains preference according to the date of the real right; because the tenement itself is subjected to the payment of the whole sums contained in the heritable bond; and the liferentrix giving consent to it, imports an acquiescence to all that may follow upon it.

THE LORDS found, That there can be no mails and duties upon the adjudication founded on the personal obligation in the bond granted by the wife *stante matrimonio*; but found that the heritable bond is a good title for pointing the ground for the bygone annualrents, and in time coming.

Act. *Spotiswood.*Alt. *Fleming.*Clerk, *Robertson.**Bruce, v. 1. No 96. p. 118.*


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 S E C T. VIII.

Effect of alienation by a Wife of her own Property, with her  
Husband's consent.

1566. February 12.

MELVILL against DUMBAR.

HELEN MELVILL made a renunciation of a tenement in Kinghorn in favours of her son David Dumbar, without consent of her husband, who was then absent. The husband afterwards being come home, ratified the renunciation. Yet the LORDS found it null from the beginning, and that the husband's ratification supervenient could not make it valid, unless the wife had made a new renunciation with her husband's consent.

No 195.

*Spotiswood, (HUSBAND AND WIFE.) p. 155.*

\* \* \* See Maitland's report of this case, No 206. p. 601.