

THE LORDS found that she should pay the said annualrent during her possession of the said lands. No^r 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 *præpositura* 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 DECRET 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.

No 281.

found null, though the decree on which it proceeded was given against her *ob propriam delictum*.

ing him out of the lands of ———, set in tack to the said William by them; the said lands being the said Christian Bannerman's conjunct-fee lands, provided to her by another called Stuart, who was her prior husband; and they having suspended that decret, the letters were found orderly proceeded against them both, whereupon they both being denounced rebels, James Stuart is donatar to both their escheats. The second husband being then also dead before the obtaining of the gift, and he seeking declarator against the said relict, the LORDS found the horning null, and that no declarator could pass thereon, and that the woman's escheat fell not by that horning, seeing it was done and executed against her, she then having a husband, in whose lifetime no horning could be effectually used against the wife, for then she was under the power of her husband, who ought to have defended her, and she had no person to suspend or relax, or do any deed, but as her husband should please to do for her; neither was it respected, where it was replied, that the decret was given against her *ex proprio facto, et ob proprium delictum*, and in her own conjunct-fee lands; for it was found, that even in that case, that *stante matrimonio*, albeit the woman should fault as well as the man, yet the husband was liable therefor; and that no civil execution by horning could be validly executed against the wife therefor, till after the husband's death; and the said nullity was received summarily, without necessity to reduce thereupon. This would appear to give great liberty to wives to do wrong, their husbands living; and if the husband should die before reparation of the wrong, that no redress should be had of the relict; albeit in bonds, or contracting of debts it may so hold; but the case may appear otherwise in deeds unwarrantably done by the wife herself, which in the case above-written may be thought the more hard, where the wife was still rebel unrelaxed after her husband's decease, and the wrong nowadays shown to be purged after two sentences standing; but here the party obtainer of the sentence of ejection compeared not, nor was party in the cause, but only the donatar.

Act. Stuart.

Alt. Absent.

Fol. Dic. v. I. p. 408. Durie, p. 674.

* * * See Spottiswood's report of this case, No 10. p. 5734.

1634. January 23.

A. against B.

No 282.

A WIFE of Kirkaldie being pursued, and her husband for his interest, for injuring her neighbour with words, calling her witch and whore, before the Commissary of St Andrews, is decerned to make her repentance, and to ask the party pardon, and to pay 40 lib. therefor; 20 lib. to the poor of the parish, and 20 lib. to the party offended; and the husband being charged to pay the money for his wife's misbehaviour, suspends, seeing if she did any wrong to