

No 347. decease, that it may work against her heirs or executor, for it were against all reason, that for want of her oath, the parties action should altogether perish.

Clerk, *Scot.*

*Fol. Dic. v. 2. p. 241. Durie, p. 287.*

1630. *January 19.* BRENTON *against* MAXWELL.

No 348.

BRENTON pursues Agnes Maxwell for certain merchant wares, furnished to her upon her letter subscribed with her hand, the time of her widowhood. It was *alleged*, That the letter cannot prove, because it wants witnesses. For supplying thereof, the pursuer referred to her oath, that the subscription is her own hand writ. It is *alleged*, That seeing she is now married, her deposition should not be taken in prejudice of her husband. THE LORDS ordained her to give her oath upon the verity of the subscription of the letters, which ought to bind her husband to pay just debt contracted in her widowhood.

*Fol. Dic. v. 2. p. 241. Auchinleck, MS. p. 265.*

1630. *December 9.* STIRLING *against* ———.

No 349.

STIRLING, spouse to Mitchel, reponed to give her oath upon the intromission with her first husband's goods and gear *conjunctim* with the said Mitchel her present husband; but if he deny his knowledge of her intromission, her oath cannot prejudice him during his marriage with her.

*Fol. Dic. v. 2. p. 240. Auchinleck, MS. p. 267.*

1636. *January 20.* TEMPLE *against* LADY WHITINGHAME.

No 350.  
Found in conformity with  
Ker against  
Covington,  
No 347.  
*supra.*

THE Lady Whitinghame in her widowhood having granted a bond of 2200 merks to Patrick Temple, which was all written and subscribed with her own hand, which being desired by the said Patrick by way of action, to be registered against her, and against the Laird of Preston her second husband, upon whom she was married after the date of the said bond; the LORDS assoilzied the Laird of Preston's estate from all execution which may follow against him thereupon, during his lifetime, because the said bond wanted witnesses inserted therein; neither was it admitted to sustain the bond, that the pursuer offered to prove, that it was all the Lady's proper hand writ, and offered to prove it by the Lady's oath, and also by others who knew her hand writ; and also though the pursuer *replied*, That there could be no suspicion of antedating of the bond

as if it had been made since her marriage, because he offered to prove the real furnishing made to her, which was the cause of the bond, and also by divers ministers, and other famous witnesses who saw the bond before the marriage; and as this bond was good in law before marriage, so of no reason could her subsequent marriage prejudice the bond; which reply was repelled, and the allegiance of nullity of the bond sustained against the husband, which against him was found might not be supplied to receive any execution, either against his own goods, nor his wife's, during their living together, albeit the pursuer offered to restrict the pursuit to the goods only pertaining to the Lady, which was refused, but prejudice always to take the Lady's oath, for this effect only, viz. to work against herself, in case she survive her husband, or against such goods as might be found properly to belong to her at her decease, and no further.

No 359.

Act. Graig.

Alt. Gilmour.

Clerk, Gibson.

*Fol. Dic. v. 2. p. 241. Durie, p. 789.*

1668. February 26.

GEORGE GRAHAM *against* GRISSEL TOURS, and the LAIRD of KILHEAD, her Husband.

GEORGE GRAHAM having obtained a decret before the bailie, against Grissel Tours and her husband, for furnishing to her first husband's funeral; her husband suspends, and raises reduction on these reasons, that albeit he stayed sometimes in a chamber in Edinburgh, he was not in this jurisdiction, and that his wife's oath could infer no burden upon him, and that the bailies did unwarrantably hold him as confest, for not given his oath of calumny, whether he had reason to distrust his wife's oath.

THE LORDS found this unwarrantable, and therefore reduced the decret as to the husband, but decerned against the wife, *ad hunc affectum*, to affect her if she survive, or her executors after her death, or otherwise to affect any other goods she had excepted from her husband's *jus mariti*.

*Fol. Dic. v. 2. p. 241. Stair, v. 1. p. 526.*

No 351.  
Found again  
in conformi-  
ty with Ker  
against Cov-  
ington.

1676. January 11. PATON and MOSSMAN *against* PITCAIRN and her Spouse.

WILLIAM PATON and George Mossman, as factors constituted by Cornelius Williamson, an Hollander, to uplift 228 gilders, due by ticket, by umquhile John Rankin to Williamson, pursues Christian Pitcairn his relict, as intromitter with his goods, or as having promised payment before the bailies of Edinburgh. The defender raised advocacion upon iniquity, *imo*, Because the bailies sus-

No 352.  
A wife's oath  
of calumny  
cannot af-  
fect her hus-  
band.