

was antedated, for a reasonable cause, to exclude the usurpers from sequestration; and, therefore, found it relevant, that it was duly subscribed during the marriage, and revoked by the husband as a donation to the wife; and reserved the other point, which needed no probation, till the close of the cause.

*Vol. II, Page 547.*

1677. *November 8.* BARBARA GRANT *against* JANET CUTHBERT.

BARBARA Grant, being executrix confirmed to her husband, did make payment to Archibald Neilson, her son, of a bond granted by the defunct his father, to him and Janet Cuthbert, his future spouse, and the heirs betwixt them; which failyieing, Archibald's heirs;—whereupon she obtained decret before the Sheriff against the said Janet Cuthbert, to exhibit and deliver the said bond, as satisfied. Janet Cuthbert raises suspension and reduction, on this reason, That the Sheriff had committed iniquity in decerning her to deliver up a bond of a sum provided to her in liferent by her husband's father before her marriage; which sum he could not uplift, nor the debtor pay, without the liferenter's consent, unless the debtor had seen the sum securely re-employed for the wife's liferent.

It was ANSWERED, That the husband was fiar, and *dominus bonorum*; and the executrix having made payment upon sentence, payment made *bona fide* should secure her; and the wife ought to pursue her husband's executors to re-employ.

It was REPLIED, That the tenor of the bond put the executrix *in mala fide* to pay without the relict's consent.

The Lords found, That the husband could not lift, nor the debtor pay, the principal sum, without the wife's consent, or re-employing it sufficiently for her behoof; and, therefore, reduced and suspended the decret for delivery.

*Vol. II, Page 556.*

1677. *November 13.* THOMAS WILSON *against* GEILES FERGUSON and Her SPOUSE.

THOMAS Wilson pursues Geiles Ferguson, for payment of an account of ale and beer furnished to her by the space of six years; and also her husband, for his interest.

The defender ALLEGED, That the libel was only probable *scripto vel juramento*, by the Act of Parliament declaring all counts to be so probable after three years; and so no article of this account can be sustained, it being three years preceding, to be proven by witnesses.

It was ANSWERED, That the Act of Parliament allows counts to be proven by witnesses, being pursued within three years; which three must be accounted from the last article of the count; and so must not severally relate to every article, but to the account, consisting of more articles.

It was REPLIED, That though the currencies of counts have been found rele-