

S E C T. V.

Effect of rendering the Wife's Heritable Subjects Moveable.

1609. *June 11.* O G I L V I E S *against* EARL OF EGLINTON.

No 31.
Requisition
and horning
used by a
married wo-
man for her
principal
sum, was
found not
to make it
moveable
so as to em-
power her
husband to
discharge it
jure mariti,
without her
consent; but
that she or
her executors
might still
crave it.

Ogilvie's daughters, and heirs to their mother Martha M'Calzean, and Mr David Ogilvy their father, assignee constituted by the Guidwife of Whitekirk, who were heirs to umquhile Euphan M'Calzean their mother, pursue the Earl of Eglinton, to hear and see a contract made betwixt his umquhile Guidscher and Mr Thomas M'Calzean, for infesting the said Mr Thomas and his heirs in an annualrent forth of the said Earl's lands, which was registered in the said Mr Thomas's time, and transferred to Euphan his daughter in this Earl, to be now transferred in these pursuers.—It was *excepted*, That this contract could not be transferred, because the said umquhile Euphan M'Calzean, proprietor of the said annualrent, and Patrick Moscrop her spouse, having made requisition to the defender for the principal sum, whereupon the said annualrent was granted, and put the said Earl to the horn for non-payment of the same, he had thereafter satisfied the said Patrick, to whom it appertained *jure mariti*, as made moveable by the said requisition and horning, and had reported his acquittance of the said sum.—It was *answered*, That the alleged acquittance of the husband could not prejudice the wife of her heritable annualrent, unless she had renounced and subscribed a formal renunciation.—THE LORDS having reasoned the matter, and considered that the requisition and horning appeared to make the sum moveable, whereby if the husband had past to the horn, it might have fallen under his escheat, so might he have disposed upon it, and discharged it; nevertheless, because he could not have granted a voluntary grant of redemption after her requisition, unless she had consented and subscribed, the LORDS found that the allegiance was not relevant, and decerned the contract to be transumed.

Fol. Dic. v. 1. p. 386. Haddington, MS. No 1613.

1679. *February 21.* C O C K B U R N *against* BURN.

No 32.

A HUSBAND pursued for exhibition and delivery of a bond lent out by his umquhile spouse, which therefore must be presumed to be out of his means. Against delivery it was *pleaded* by an assignee from the wife, That the bond came in place of an heritable bond due to the wife before her marriage, which

she had uplifted.—THE LORDS found it relevant that the wife had an heritable bond before her marriage; and found, that her uplifting thereof being again re-employed heritably, did not make it fall to the husband as moveable.

No 32.

Fol. Dic. v. 1. p. 386. Stair.

* * * Fountainhall reports the same case :

THE LORDS found, where wives uplift sums heritable *quoad maritum*, and re-employ them again upon another heritable security, the husband had no interest therein, though he got no tocher; as also they found, (which was never decided before,) that in the wife's deeds of administration of her own proper goods, not falling under communion, she needed not her husband's consent, without prejudice of his right to the annualrents *jure mariti*. This last was not debated.

Fountainhall, MS.

* * * See Stair's report of this case, No 29. p. 5993.

1685. *March.*

MARTON ROLLO and her SPOUSE *against* MR JOHN FORREST, nearest of kin to MR ROBERT FORREST.

MR ROBERT FORREST minister, and Marion Rollo sister to the Lord Rollo, being married without a contract of marriage, she, after the marriage, renounced a comprising she had for 8000 merks upon the lands of Bannockburn with consent of her husband, and the money was uplifted, whereof they spent 2000 merks, and lent 6000 to my Lord Abbotshall upon bond, bearing the receipt of the money from Mr Robert and his wife, and providing the liferent to them, and the fee to the bairns of the marriage; which failing, to Mr Robert's heirs and assignees. After the death of Mr Robert, and of the children of the marriage, who died after their father, the relict pursued a declarator that the 6000 merks in the hands of Abbotshall was a part of her 8000 merks heritably secured in manner above mentioned; and therefore ought to belong to her, because, as it fell not under the *jus mariti*, so it was uplifted *stante matrimonio*, and settled upon the husband and his heirs to her prejudice; consequently revocable as a *donatio inter virum et uxorem*.

Alleged for the defender, That the marriage was an onerous cause, which hinders revocation of deeds by way of provision to a husband or wife, when there is no contract of marriage. *2do*, There is nothing settled on the husband but a liferent, and the last substitution to his heirs, failing the wife's own children, who were the fiars. *3tio*, She has homologated the settlement by granting discharges of annualrent relative to the bond, since her husband's decease.

No 33.

An heritable bond, belonging to a woman before her marriage, was uplifted by her during marriage, and again lent out, to her and her husband in liferent, and their children in fee; whom failing, to the husband's heirs. Found, that it fell under her husband's *jus mariti*, unless she could make it appear that it was uplifted to be re-employed otherwise than in terms of the new bond.