

No 241.

THE LORDS (in a reduction of the said deeds at the instance of the lady and her husband), found, that *post sponsalia* and *banna*, she was not *sui juris*, and could do no deed in prejudice either of her husband or herself, without his consent, and that she was in the same condition as if she was married: And therefore the LORDS found the reasons relevant for reducing the said rights, both as to her husband and herself.

It was *alleged*, that the husband had consented, in so far as after the said deeds were done, he knew the same, and yet proceeded to marry. THE LORDS repelled the allegiance.

Dirleton, No 13. p. 7.

No 242.

A gratuitous discharge of the bygone annualrents of a bond, after proclamation of banns, was not sustained in prejudice of the husband.

1682. *March.*GILCHRIST and GRANT *against* PRINGLE.

ROBERT PRINGLE and Bessie Crichton, being debtors by bond to Bessie Gilchrist, in the sum of 400 merks, bearing annualrent, whereupon the said Robert Pringle being charged at the instance of the said Bessie Gilchrist and John Grant her husband for his interest, he suspended upon this reason, that the said Elizabeth Gilchrist, the wife, had discharged all the annualrents preceding Martinmas 1681, before the marriage. *Answered*, that no respect ought to be had to the discharge, because it was granted after proclamation of the marriage, as appears by a certificate under the hands of the minister and elders; and by the constant practice such discharges are not sustained in prejudice of the husband, and was particularly decided, Scott against Brown, No 240. p. 6030. M'Dougal against Aitkin, Haddington, MS. No 236. p. 6027., albeit the proclamation was made at the husband's parish church; and the like was decided in the case of a disposition in favour of the wife's children, after a proclamation, Fletcher, No 239. p. 6029. THE LORDS repelled the reason of suspension founded upon the discharge of the annualrents, because the same was after proclamation, albeit before contract or marriage.

1682. *November.* IN the action at the instance of John Grant and Elizabeth Gilchrist, his spouse, against Robert Pringle, mentioned the day of March last, the said Robert Pringle, suspender, having craved allowance of certain clothes and household furniture that he delivered to her when she was married, and for alimending her the space of seven or eight years before she was married; *answered*, that the price of the clothes and household furniture is not competent *hoc loco*, being neither liquid nor verified; and albeit the same were instructed, yet it ought not to be allowed, because the suspender's wife, with his knowledge, did gift these clothes and household furniture to the charger's wife when she was married, in so far as it is offered to be proved that the suspender sent his own horse, cart, and servants, to carry the furniture to the

charger's house, and so must be presumed to be *donatio propter nuptias*; neither can he have any allowance upon the account of alimending the charger's wife, because it is presumed that the mother alimended her *ex pietate materna* for these years before her mother was married to the suspender; and the charger's wife being about twelve years of age that time, the suspender ought not to have allowance for years subsequent, because she served them in the house in the condition of an ordinary servant; as also, the suspender having intromitted with the wife's first husband's hail moveables, and having given bond for the sum charged for to the charger's wife, for her part, he cannot crave allowance or retain any part of the same upon the account of aliment. THE LORDS found that any furnishing by his mother to the charger's daughter after the bond, is not competent *hoc loco*, but reserve action therefor, as accords of the law; and found the qualification that the father in law furnished horse, cart, and servants, to carry the goods and plenishing to the charger's house, relevant to infer that the same were gifted; and remit to the Ordinary to enquire if the first aliment acclaimed by the suspender before the charger's wife's age of twelve years was before or after the bond charged upon.

Fol. Dic. v. 1. p. 404. Sir P. Home MS. v. 1. No 203. and 277.

* * Harcarse reports the same case.

1682. *December.* FOUND that a discharge, granted by a woman after proclamation of marriage, which is in place of intimation, did not prejudge the husband, unless the receiver could prove the onerous cause.

Harcarse, (CONTRACTS OF MARRIAGE.) No 351. p. 86.

S E C T. III.

What if there has been no Proclamation?

1667. *December 18.*

JOHN AUCHINLECK *against* MARY WILLIAMSON and PATRICK GILLESPIE.

MARY WILLIAMSON, Lady Cumlidge, having taken assignation to several debts of her husband's, apprised the estate from her son; and in September 1662, disposes the estate to her eldest son, reserving her own liferent of the mains and mill, and with the burden of 5,000 merks, for John Auchinleck her

No 243.

A widow having a jointure, entered into a treaty of marriage with a second husband. It was settled, that the eldest