

to their wives, and yet, being master of the bonds, to give them back, and uplift the money without the wife's consent; and, consequently, they might discharge or extinguish the same by compensation. Duplied, When such a thing is intended, the bond uses to bear a faculty to the husband to uplift without the wife's consent, and this bond must be presumed to have been so conceived, in implement of the contract of marriage, although it do not expressly relate thereto. The Lords found the answer and duply for the relict relevant, though no infestment on the bond had passed in her person; and that the grounds of compensation, prior to the bond, could not be obtruded against the wife, seeing the obligation to pay annual-rent to her was a passing from all these grounds.

Page 93, No. 361.

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1684. *January.* JEAN YOUNG *against* WILLIAM YUIL.

THE like to the former decision, [the preceding case,] was found two days after, betwixt Jean Young and William Yuil, with this difference, that the bond related to the obligation in the contract, whereby the tocher was to be so employed.—*Vide 29th March 1626.*

Page 93, No. 362.

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1684. *January.* LEARMONTH *against* THOMAS WILSON and His WIFE.

MR Thomas Learmonth having complained to the Lords, by bill, in his own name, That a decret against his deceased client, the Laird of Ratho, a tutor for whom he had compeared, was surreptitiously extracted in terms different from the minutes; and thereupon, the Lords having ordained the decret to be re-produced, Mr Thomas insisted upon his new defences, which occasioned new interlocutors: but the pursuer perceiving that the apparent heir, who bruiked the defunct's estate by an expired apprising, lay by, and did not crave any amendments to shun a passive title, he alleged there could be no ratification of the decret, unless there was a lawful contradictor; and that Mr Thomas's *mandatum*, as advocate, expired with the death of the tutor: and though the defunct's other creditors should concur, as they do not, yet they could only crave that the decret should be conform to the minutes that were passed before the defunct's decease; but an advocate who had no interest could crave no rectification. The Lords adhered to the new rectifications craved by the advocate, they being materially just, though there was no other contradictor. This was irregular.—*Castlehill's Pratt. tit. Decrets, No. 33.*

Page 108, No. 403.

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1684. *January.* AGNES BAIRD *against* ROBERT STUART.

Found that a decret-arbitral, whereof the matter in difference was depending in a process, was not reducible upon lesion *ultra dimidium*, more than if there had been a transaction; seeing, the matter being uncertain and litigious, the lesion could not be known.

Page 109, No. 404.