

same depended upon a cause, viz. the contract of alienation, whilk was prior to the pursuer's contract of marriage, and infestment following thereupon, and so ought to be drawn back to its own cause, and should defend him in this judgment possessory. It was *replied*, That because the contract of alienation was no real right to debar the pursuer frae enjoying her infestment, proceeding upon her contract of marriage, which was so favourable, that by the law and practice of this realm, wives were not holden to reduce infestments, given by their husbands, in prejudice of the infestments granted conform to the contract of marriage, although clad with possession; but immediately after their husband's decease, they are in use, upon their right, to pursue either upon removing, or for mails and duties of the lands wherein they are infest, conform to their contract of marriage, and need not to pursue for reduction of rights posterior to their infestment, although cald with possession. THE LORDS repelled the exception.

Fol. Dic. v. 2. p. 176. Auchinleck, MS. p. 267.

1631. July 22.

MACK *against* PARBON.

GEORGE MACK pursued — Parbon relict, and intromissatrix with umquhil Home, her husband's goods and gear, for a sum owing by her to the pursuer. She alleges, she cannot be pursued as intromissatrix, because she has confirmed herself executrix to her husband, as a creditor for the condition due to her by contract of marriage. It is replied, That this confirmation cannot prejudice the pursuer, who had intented his summons long before the confirmation. It was duplied, That, notwithstanding of the pursuer's diligence, yet, in respect of her debt, she ought to be preferred to all others, her husband's creditors; whilk the LORDS found relevant.

Fol. Dic. v. 2. p. 176. Auchinleck, MS. p. 258.

1672. November 14.

WILLIAM SMEATON *against* The EXECUTORS of JAMES DUNLOP.

IN a suspension raised at Smeaton's instance against the Executors-Creditors of James Dunlop, upon this reason, that the decret was wrongously given against him for sums of money he had paid to the defunct's relict, who was a preferable creditor by her contract of marriage, as likewise decerned executor-creditor by the Commissaries; it was *answered*, That the said relict being only decerned but never confirmed, had no title in her person, and therefore decret was justly given at the charger's instance, who was not only decerned, but confirmed executor.

No 4.

No 5.
Found again
in conformity
with Cranston
against Home,
No. 1,
p. 11823.
See No 11.
p. 11833.

No 6.

Found as
above.
See No 1.
p. 11833.