

1627. *March 20.*KNOWS *against* KNEELAND.

No 76.

A woman and her husband, for his interest, were charged upon a decree obtained against her before her marriage. After they were denounced, the wife having died, the husband, in a suspension, was liberated from all further diligence.

IN a suspension betwixt Knows and Kneeland, Knows having obtained decret before the Commissaries of Edinburgh against M. Hill, as intromissatrix with the goods of her umquhile husband, for payment of a debt owing by her husband ; and after the decret she being married upon Hary Kneeland her second husband ; who being charged for his interest with her upon that sentence, for payment of that debt decerned against her ; and being both denounced for not payment, the wife being principal debtor, as representing her first husband, and for whose debt sentence had past against her in her widowhood, she deceases ; after whose death Kneeland, her second husband, suspends, because he being only charged for his interest for his wife's debt, and she being dead, he ought to be freed of all execution. This reason was found relevant ; for the wife, who was principal debtor, being dead, they found that her husband could not be astricted as husband *pro interesse*, to pay the debt, albeit he was put to horn therefor in the wife's time ; whereby the charger *alleged*, That he thereby became properly debtor himself, being once lawfully denounced for not payment, which should be respected as if he had made payment in her time, *quo casu* he could not remit it back again ; which was repelled. But because the charger alleged that the suspender had intromitted with all his wife's goods and gear after her decease, therefore the LORDS found that relevant to sustain the same charges against him *hoc ordine* in the suspension ; and found no necessity to put the charger to a new pursuit against the suspender, thereupon to convene him as intromitter.

Act. *Mowat.*

Act. —

*Fol. Dic. v. 1. p. 390. Durie, p. 272.*1664. *July 11.*DUNBAR of Hemprigs *against* FRAZER.

No 77.

A husband assoilzied from his wife's debt after she died, altho' there was an interlocutor ordaining him to give bond for what should be found due by her.

HEMPRIGS, as executor to Dumbeath, having pursued the Lady Frazer, relict of Dumbeath, and the Lord Frazer for his interest, for payment of executry intromitted with by the Lady, there being litiscontestation in the cause, Dumbeath calls the act, and craves the term to be circumduced against the Lord Frazer, who *alleged*, That now his Lady was dead, and so his interest being *jus mariti*, ceased.—It was *answered*, Litiscontestation being made, the debt was constituted in the husband's person, as if he had contracted to pay it, litiscontestation being a judicial contract ; *zdy*, The Lord Frazer was decerned to give bond to pay what his Lady should be found due.—Frazer *answered*, That no bond was yet given, and that the ordinance was only against him as he was cited, which was for his interest, which is ceased.

And which the Lorbs found relevant and assoilzied.

Fol. Dic. v. 1. p. 390. Stair, v. 1. p. 212.