

her without her friends' consent, and must be presumed by the same means to have purchased the same disposition from her, without any remuneratory provision to her: *2dly*, There is not, nor cannot be known any such back-bond; and it were absurd that the husband's brother's oath alone should prove the same in favours of his brother. The defender *answered*, That albeit there was no jointure provided, yet the law provides a terce, which oft-times is better than the jointure. The pursuer likewise *answered*, That the law did provide the *jus mariti* and the courtesy, so that either party ought either to acquiesce in the provision of law, or the provision of parties must be mutual.

THE LORDS repelled the first defence, especially in respect of the manner of libelling the title; and found not the executions of the first summons to appear new, and therefore sustained them, unless the defender would improve the same. They found also that allegiance, that the disposition was to the husband's behoof, was not to be sustained; especially seeing no back-bonds were produced, or offered to be proven, and that the manner of probation offered was no way sufficient, that there was no provision for the wife. See PRESCRIPTION.

Stair, v. 1. p. 638.

* * A similar decision was pronounced, Vernock against Hamilton,
No 75. p. 2214. *voce* CITATION.

1697. June 2. A MINISTER'S EXECUTORS *against* PARISHIONERS.

A QUESTION was moved to the Lords, on the occasion of a bill of suspension, presented by some parishioners against a minister's executors, charging for some bygone stipends resting to him during his incumbency, and for which he had served; whether the act of Parliament, requiring consignation in case of suspending ministers' stipends, took place in this case? THE LORDS found it was *privilegium personale*, competent only to the minister himself, that he might not be drawn away and diverted from attending his charge of souls; and therefore, where collectors of vacant stipends charged, they could not crave consignation. Some of the Lords looked upon it as equally favourable to a minister's relict and nearest of kin, and that the privilege seems to follow the stipend, as *really* annexed thereto: Yet in regard the practice, since the date of that act of Parliament 1669, appointing consignation to ministers had been otherwise, the Lords would not extend it.

Fol. Dic. v. 2. p. 72. Fountainhall, v. 1. p. 773.

No 8.

No 9.

Found, that act 1669, requiring consignation in case of suspending minister's stipends, confers *privilegium personale* on the minister himself only.