

No 360. 1615. February 9. MUIRHEAD *against* DANISTON.

IN an action betwixt George Muirhead and Janet Daniston, the father of the said Janet, the LORDS found the contract of marriage null and void, in so far as Mr James, in his own time, had provided her to an annual rent of 4 merks, which was above the annual rent of L. , in which Mr James was obliged to infest her; and that, notwithstanding there was no relation made, that the same was for fulfilling of the contract of marriage, and also, notwithstanding of the 4 merks, to which she was provided, was alleged to be her own gear, which she got from her first husband, which they offered to prove by the contract itself, which bore, that the sum of merks was promised to them by Mr Samuel Ellis, for the price of the half of the wares, being in the stamp shop, whereof the said Samuel and Andrew Ellis, first spouse to the said Janet, were partners.

*Kerse, MS. p. 64.*

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S E C T. XI.

Contract of Separation, *bona gratia.*

1624. February 11. DRUMMOND *against* ROLLOCK.

No 361.

A contract of separation *bona gratia*, found null, in consequence of which money saved by the wife during the separation, was found to belong to the husband.

THE Lady Athol having borrowed 1000 merks from the Lady Burgh, she granted to her a bond thereupon, with a blank for inserting the name of the creditors to whom it should have been paid. This bond being assigned by her, and delivered to one Alexander Drummond, who inserted his own name therein, and charged the Lady Athol, and Captain Rollock her husband for the same; who suspending, that the bond was blank the time of their subscription, and the sum pertained to the Lady Burgh, from whom they borrowed it, at the which time she was clad with a husband, who yet lives, to whom the same must appertain, and in whose prejudice the Lady could not assign the same nor any other name could be inserted therein, to prejudice his right thereof; and the charger alleging, that the Lady and her husband, by a voluntary separation made betwixt them, of their mutual consent were divorced, like as the husband, in respect of that separation, had given her a certain sum of money for her sustentation; of the which sum this sum now acclaimed is a part, and so the husband can have no interest to claim any part of this