

wards inhibit his Lady on his prerogative, and it would then be the proper time to dispute that point. No 235.

*Replied,* The reducing this inhibition would expose the Earl to the debts of the Countess, contracted since it was raised.

THE LORDS, 11th November, 'repelled the reasons of reduction, but remitted to an Ordinary to consider the inhibition; and in case he observed any injurious reasons contained therein, that he should order them to be struck out of the inhibition, as also out of the record of inhibitions.'

THE LORDS refused a bill, and adhered.

*Act. W. Grant & Lockhart.*

*Alt. H. Home.*

*Clerk, Gibson.*

*D. Falconer, v. I. No 209. p. 289.*

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## DIVISION VII.

After Proclamation of Banns, the Woman considered to be in the same case as if actually Married.

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### SECT. I.

What Proclamation Sufficient.

1623. July 8.

M'DOUGAL *against* AITKIN.

JANET STUART, relict of James Stuart, called of Jerusalem, by her bond given to John Aitkin litster in Edinburgh, as cautioner for her father, is bound to pay as cautioner foresaid, the sum of 500 merks; this bond is desired to be reduced at the instance of Andrew M'Dougal her second spouse, upon this reason, because the same was made by her, after she was contracted in marriage with the said Andrew, and after the bonds of marriage were proclaimed in the parish church of the Inch, in the west country, which was the said Andrew the pursuer's parish church, so that after that contract and proclamation, she could do no deed that might prejudice her, or the pursuer, now her husband, with whom

No 236.

A gratuitous bond by a woman, after the banns were proclaimed in the church of the parish where her future husband dwelt, was sustained, because it was executed six

No 236.  
weeks before  
she gave up  
her name to  
be proclaimed  
in the church  
of the parish  
where she had  
dwelt for a  
year before.

she was then contracted, without his consent. THE LORDS found this reason not a relevant cause, which could take away the bond, or prejudice the creditor of his lawful debt, seeing the bond controverted was made in the town of Edinburgh; where it was alleged by the defender, that the said Janet Stuart dwelt and remained at the making thereof, and a year before; and her private contract of marriage could not prejudice the defender, who knew not the same; neither ought the proclamation of the bonds of marriage, albeit made before the obligation libelled, to prejudice him, being made only at the parish church of the Inch, and not within the church of Edinburgh, where both she and the defender then dwelt. Likeas, the defender offered to prove, that the said Janet by the space of a month after the date of the bond, gave up her banns of the marriage with the said pursuer, to be proclaimed within the church of Edinburgh. This allegiance was found relevant, and admitted by the LORDS, for eliding of the foresaid reason.

*Fol. Dic. v. 1. p. 404. Durie, p. 70.*

\* \* Haddington reports the same case :

A BOND given by Robert Stuart and Jean Stuart his daughter, relict of James of Jerusalem, as cautioner for her father, to one Aitken, being sought to be reduced, as being made after the said Jean was contracted in marriage with Andrew M'Dougal, and their banns proclaimed in his parish kirk of the Inch, the LORDS admitted an exception, that Aitken was *in bona fide* to take her caution, because he was ignorant of her private contract, and offered to prove that his bond was subscribed six weeks before she gave up her name to be proclaimed in Edinburgh, where she had dwelt an year immediately before.

*Haddington, MS. No 2889.*

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1722. July 23. M'LELLAN *against* M'LELLAN and MITCHELL.

No 237.

IN a process of reduction, at the instance of the husband and wife, of a gratuitous disposition granted by the wife, the LORDS sustained the reason of reduction, that the disposition was granted after the parties were twice proclaimed in the church of Leith, the parish church where the husband dwelt, though the wife had her domicil in the Canongate; the receivers of the disposition having been *de recenti* communers in the treaty of marriage betwixt the parties; and found it not relevant to elide the same, that the wife, at granting the disposition, told that the treaty was broke up, the marriage having followed quickly after. See APPENDIX.

*Fol. Dic. v. 1. p. 404.*