

No 347. decease, that it may work against her heirs or executor, for it were against all reason, that for want of her oath, the parties action should altogether perish.

Clerk, Scot.

*Fol. Dic. v. 2. p. 241. Durie, p. 287.*

1630. January 19. BRENTON against MAXWELL.

No 348.

BRENTON pursues Agnes Maxwell for certain merchant wares, furnished to her upon her letter subscribed with her hand, the time of her widowhood. It was *alleged*, That the letter cannot prove, because it wants witnesses. For supplying thereof, the pursuer referred to her oath, that the subscription is her own hand writ. It is *alleged*, That seeing she is now married, her deposition should not be taken in prejudice of her husband. THE LORDS ordained her to give her oath upon the verity of the subscription of the letters, which ought to bind her husband to pay just debt contracted in her widowhood.

*Fol. Dic. v. 2. p. 241. Auchinleck, MS. p. 265.*

1630. December 9. STIRLING against ———.

No 349.

STIRLING, spouse to Mitchel, reponed to give her oath upon the intromission with her first husband's goods and gear *conjunctim* with the said Mitchel her present husband; but if he deny his knowledge of her intromission, her oath cannot prejudice him during his marriage with her.

*Fol. Dic. v. 2. p. 240. Auchinleck, MS. p. 267.*

1636. January 20. TEMPLE against LADY WHITINGHAME.

No 350.  
Found in conformity with  
Ker against  
Covington,  
No 347.  
*supra.*

THE Lady Whitinghame in her widowhood having granted a bond of 2200 merks to Patrick Temple, which was all written and subscribed with her own hand, which being desired by the said Patrick by way of action, to be registered against her, and against the Laird of Preston her second husband, upon whom she was married after the date of the said bond; the LORDS assoilzied the Laird of Preston's estate from all execution which may follow against him thereupon, during his lifetime, because the said bond wanted witnesses inserted therein; neither was it admitted to sustain the bond, that the pursuer offered to prove, that it was all the Lady's proper hand writ, and offered to prove it by the Lady's oath, and also by others who knew her hand writ; and also though the pursuer *replied*, That there could be no suspicion of antedating of the bond