

1668. *January 3.*

A. against B.

A WIFE provided to an annualrent in victual, out of certain lands, by her contract of marriage, did renounce the same, and thereafter was infeft in an annualrent out of other lands. And, upon the said last infeftment, a process being intented for pointing of the ground, it was *alleged*, That the sasine was null, being alleged to be given by a husband *propriis manibus*, and the assertion of a notary without any precept or warrant in writ. It was *answered*, That the marriage, with the relict's renunciation of her former right, and her contract of marriage, being all produced, are sufficient adminicles to sustain the same.

THE LORDS inclined to favour the relict, yet they found it of a dangerous consequence, that a real right should depend upon the assertion of notaries and witnesses. And the question not being, whether the husband might or ought to have given his wife the said right in recompense of her former; but whether *de facto* he did the same, seeing the foresaid writs having no relation to the sasine, either as given or to be given, could not be adminicles to warrant or sustain the same; and, therefore, before answer, it was thought fit to inquire if there had been any decision in the like case, as was informed.

*Dirleton, No 125. p. 51.*

1674. *June 6.*HELEN MURE *against* JOHN LAW.

A RELICT being pursued, as executor to her husband, for a debt, *alleged*, she was only executor creditor for payment of 2400 merks, provided to her by contract of marriage. It was *answered*, That the debt was satisfied, at least compensated; in so far as she was obliged, by the same contract, to give the defunct goods and gear to the value of 2400 merks, which she declared she had in penny and penny worth, and was worth the same; (which are the words) and obliged herself to put him in possession thereof.

THE LORDS found, that the husband having lived only nine years after the marriage, because of the presumption that he had been silent all the time, and had not craved, nor declared the said sum to be resting, it was therefore to be thought, that he had gotten the goods, and that the obligation was satisfied; and so they thought, that there being so much confidence betwixt husband and wife, it were hard to put her to a full probation; they therefore ordained her to give her oath of calumny, that she had satisfied the obligation, and to adduce some probation and adminicles to prove *aliqua liter*.

In the same cause, it being further *alleged*, that the husband had paid for his wife as much debt as would exhaust that which she had brought with her, and so that she had not paid it effectually,

No 335.

Doubted, whether infeftment *propriis manibus* of a husband, in favour of his wife, in implement of her contract of marriage, was to be held as good evidence of the fact.

No 336.

A relict, pursued as executrix of her husband, alleged she was creditrix for her provision in her contract of marriage. Certain obligations on her part were opposed. She was allowed to make oath that she had satisfied her obligation. The marriage had subsisted nine years.