

\* \* Gilmour reports the same case :

No 166.

ALEXANDER HALIBURTON of Coldingknows and Margaret Ker his spouse, were obliged by their bond to pay to Isobel Lithgow the sum of 1200 merks ; which she having assigned to Mr Michael Fisher her eldest son, he charges the said Margaret after her husband's death ; who suspends upon this reason, that the bond is null, being made by her *stante matrimonio*, at which time she could not oblige herself effectually. It was *answered*, That she did ratify the same judicially with an oath not to quarrel. *Replied*, A ratification and an oath cannot make a null bond valid, both being done *eadem facilitate* ; as was found January 1663, betwixt Douglas and Birch, No 165. p. 5961. *Duplied*, The suspender was in effect *præposita negotiis mariti*, and had had the management of all, being but a simple man, to whom no neighbour nor other would trust any thing without her : Likeas, her power was such with him, that she caused him dispoise his whole estate to her brother, Sir Andrew Ker younger of Cavers, reserving her liferent, and upon condition that the fee should also come to her in some cases mentioned in the disposition ; so that she having bound herself and sworn, and got in effect his estate to her and her's, she ought to be liable notwithstanding of the practise which meets not.

*Gilmour, No 128. p. 93.*

1672. July 18.

WATSON against BRUCE.

No 167.

ONE having granted an assignation bearing to be for relief of a debt, wherein the assignee stood cautioner for him, and also for relief to his wife of another debt wherein she was cautioner ; against the wife pursuing the assignee for her relief, it was *objected*, that her cautionry obligation was null, and therefore, *quoad* her, there was no debt to demand relief of. *Answered*, A wife's personal bond, as it is a valid natural obligation, so it is sufficient by our law to found an action, only the law gives the debtor a perpetual exception to protect her from payment ; this exception is a privilege she may use or not at her pleasure, and if she is willing to wave her privilege, she must be entitled to relief equally with any other cautioner. THE LORDS found, that the pursuer might forbear to make use of her privilege as a wife, and insist for her relief as a cautioner.

*Fol. Dic. v. 1. p. 399. Stair.*

\* \* See this case No 70. p. 3537.