

as if it had been made since her marriage, because he offered to prove the real furnishing made to her, which was the cause of the bond, and also by divers ministers, and other famous witnesses who saw the bond before the marriage; and as this bond was good in law before marriage, so of no reason could her subsequent marriage prejudice the bond; which reply was repelled, and the allegiance of nullity of the bond sustained against the husband, which against him was found might not be supplied to receive any execution, either against his own goods, nor his wife's, during their living together, albeit the pursuer offered to restrict the pursuit to the goods only pertaining to the Lady, which was refused, but prejudice always to take the Lady's oath, for this effect only, viz. to work against herself, in case she survive her husband, or against such goods as might be found properly to belong to her at her decease, and no further.

No 359.

Act. Graig.

Alt. Gilmour.

Clerk, Gibson.

*Fol. Dic. v. 2. p. 241. Durie, p. 789.*

1668. February 26.

GEORGE GRAHAM *against* GRISSEL TOURS, and the LAIRD of KILHEAD, her Husband.

GEORGE GRAHAM having obtained a decret before the bailie, against Grissel Tours and her husband, for furnishing to her first husband's funeral; her husband suspends, and raises reduction on these reasons, that albeit he stayed sometimes in a chamber in Edinburgh, he was not in this jurisdiction, and that his wife's oath could infer no burden upon him, and that the bailies did unwarrantably hold him as confest, for not given his oath of calumny, whether he had reason to distrust his wife's oath.

THE LORDS found this unwarrantable, and therefore reduced the decret as to the husband, but decerned against the wife, *ad hunc affectum*, to affect her if she survive, or her executors after her death, or otherwise to affect any other goods she had excepted from her husband's *jus mariti*.

*Fol. Dic. v. 2. p. 241. Stair, v. 1. p. 526.*1676. January 11. PATON and MOSSMAN *against* PITCAIRN and her Spouse.

WILLIAM PATON and George Mossman, as factors constituted by Cornelius Williamson, an Hollander, to uplift 228 gilders, due by ticket, by umquhile John Rankin to Williamson, pursues Christian Pitcairn his relict, as intromitter with his goods, or as having promised payment before the bailies of Edinburgh. The defender raised advocacion upon iniquity, *imo*, Because the bailies sus-

No 351.  
Found again  
in conformi-  
ty with Ker  
against Cov-  
ington.

No 352.  
A wife's oath  
of calumny  
cannot af-  
fect her hus-  
band.

No 352.

tained the said Christian's oath, to prove her intromission, or promise, which was not sustainable, she being clad with a husband to his prejudice. It was *answered*, That the oath was relevant against the wife herself, to affect her goods, after the dissolution of the marriage, and that there was no iniquity, seeing this restriction was not proponed and repelled.

THE LORDS found, That this restriction ought to be adhibited, but seeing it was not proponed, they repelled the reason of advocation, but allowed the restriction to be adhibited by the bailies.

The *second* reason of advocation was, That the bailies had sustained process, libelled at the instance of these factors, and not at their constituent's instance, and concluding to pay the factors.

THE LORDS repelled also this reason, and found, That the factors might proceed in this order, but that the defender might prove against them by the constituent's oath.

The *third* reason was, That the bailies had sustained the pursuit upon a factory, which is null, not being subscribed by the constituent, or by two notaries for him, but only by one notary. It was *answered*, That the factory was sustained, because it was offered to be proved, That by the custom of Holland, whereby the factory was granted, one notary was sufficient.

Which the LORDS sustained, and therefore repelled this reason also. THE LORDS likewise found, That a wife's oath of calumny was not receivable in prejudice of her husband, because her confession thereby being holden as confessed, would be probative as well as her oath of verity.

*Fol. Dic. v. 2. p. 240. Stair, v. 2. p. 394.*

1676. February 11.

MARSHALL *against* BASSIL.

No 353.

A WOMAN who was tutrix to her son, having married a second husband, whom the minor chose to be his curator, in an *actio tutelæ* against the mother and her second husband, where her intromissions were referred to her oath, it was *objected*, not a relevant proof against the husband. *Answered*, It being known to the husband, that his wife was left tutrix, and that she had administrated accordingly, the pursuer cannot be prejudged by the marriage, being *ante rationes redditas*. THE LORDS did find the charge was relevant to be proved by the wife's oath to bind the husband, he himself being curator, and knowing that she was tutrix, and so constituted debtor to count.

*Fol. Dic. v. 2. p. 240. Gosford.*

\* \* This case is No 63. p. 5852, *voce* HUSBAND and WIFE.