

No 276. against her *stante matrimonio*, to be lawful. *Item*, they fand ane horning executed against her at the instance of ane _____, upon a decret recovered against her *principaliter*, and against her husband for his interest, null, because, *stante matrimonio*, execution could not follow against her, but against her husband.

Fol. Dic. v. I. p. 408. Kerse, MS. fol. 64.

* * * Haddington reports the same case :

ANE horning executed against the Countess of Orkney, for not finding law-surety, was sustained, albeit her husband was not charged, albeit though alleged that she could not find caution *stante matrimonia*, not being able to give a sufficient bond of relief without her husband ; nevertheless the horning was sustained, as proceeding upon her disobedience ; and her liferent decerned to fall by that horning at the insance of her oye her superior.

Haddington, MS. No 2520.

No 277. 1614. November 16. MELVILLE against LINDSAY.

IN an action pursued by Sir Andrew Melville *contra* Dame Agnes Lindsay, relict of Mr David Melville of Tunghlands, it was found that the said Dame Agnes ought to give her oath, notwithstanding she stood married to William Bruce of Escheall, and that because the process was intented before the marriage.

This was an oath of calumny.

Kerse, MS. fol. 64.

No 278. 1628. March 22. SCOT against CHISHOLM.

WALTER SCOT (assignee constitute by Mr Patrick Shaw to a bond made by umquhile Gavin Elliot of Burgh, and Margaret Chisholm his spouse, whereby they were obliged to infest Mr Patrick in an annualrent of 300 merks out of their lands of Burgh, &c.) charged Margaret Chisholm, relict of Gavin, to pay the said annualrent since the date of the bond. She suspended upon this reason, that the time of subscribing the bond she was clothed with a husband, and did it *ex metu et reverentia maritali*, and therefore there should no personal execution follow upon it against her. *Alleged*, The letters ought to be found orderly proceeded, because she being infest in these same lands out of which the annualrent was due, and that not by virtue of a contract of marriage, but long thereafter, she has possessed the same continually since, and uplifted the duties thereof, and therefore she ought to pay the said annualrent wherein the charger was infest with her consent, which was a tacit revocation of her infestment.