

## S E C T. V.

Wife's Oath with regard to Transactions before Marriage, if relevant against the Husband.

1606. February 13. GAVIN WEMYSS *against* CHRISTISON.

IN the action betwixt Gavin Wemyss and ——— Christison, and Mr James Thomson, her spouse, because the pursuer referred the verity of the debt and promise to the wife's oath, and of the said Mr James her husband's knowledge of the said promise before his own contract, or proclamation of the bands, the LORDS found they had very good action.

*Fol. Dic. v. 2. p. 240. Haddington, MS. No 1028.*

No 345.

1613.

HERIOT *against* WATSON.

A PROMISE made by a woman while single cannot be proved by her oath against her after-husband.

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

No 346.

\* \* \* This case is No 61. p. 5850. *voce* HUSBAND and WIFE.

1627. March 9.

KER *against* LADY COVINGTON.

IN an action by George Ker, tailor in Edinburgh, against the Lady Covington, for payment of a sum promised by her in her widowhood, and which was referred to her oath, and whereupon her husband protested, that she could not swear to his prejudice, she being now the time of this pursuit, and since the promise, married to a husband; the LORDS found, That in this and the like cases, where the oath of a woman is craved upon promise made in her widowhood, she having a husband the time of the seeking of her oath, that the woman ought to give her oath, but the husband should not be prejudged thereby, nor yet the same should work against him or her during their marriage, but the oath should be taken to work against herself, in case it fall out that she ever be a single woman, or that she or her husband die, and after her

No 347.

In all cases where a wife is craved upon a debt contracted in widowhood, she ought to give her oath, which cannot, however, prejudice her husband, or affect her person during marriage.

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