

No 281.  
found null,  
though the  
decree on  
which it pro-  
ceeded was  
given against  
her *ob propri-  
um delictum*.

ing him out of the lands of ———, set in tack to the said William by them; the said lands being the said Christian Bannerman's conjunct-fee lands, provided to her by another called Stuart, who was her prior husband; and they having suspended that decret, the letters were found orderly proceeded against them both, whereupon they both being denounced rebels, James Stuart is donatar to both their escheats. The second husband being then also dead before the obtaining of the gift, and he seeking declarator against the said relict, the LORDS found the horning null, and that no declarator could pass thereon, and that the woman's escheat fell not by that horning, seeing it was done and executed against her, she then having a husband, in whose lifetime no horning could be effectually used against the wife, for then she was under the power of her husband, who ought to have defended her, and she had no person to suspend or relax, or do any deed, but as her husband should please to do for her; neither was it respected, where it was replied, that the decret was given against her *ex proprio facto, et ob proprium delictum*, and in her own conjunct-fee lands; for it was found, that even in that case, that *stante matrimonio*, albeit the woman should fault as well as the man, yet the husband was liable therefor; and that no civil execution by horning could be validly executed against the wife therefor, till after the husband's death; and the said nullity was received summarily, without necessity to reduce thereupon. This would appear to give great liberty to wives to do wrong, their husbands living; and if the husband should die before reparation of the wrong, that no redress should be had of the relict; albeit in bonds, or contracting of debts it may so hold; but the case may appear otherwise in deeds unwarrantably done by the wife herself, which in the case above-written may be thought the more hard, where the wife was still rebel unrelaxed after her husband's decease, and the wrong nowadays shown to be purged after two sentences standing; but here the party obtainer of the sentence of ejection compeared not, nor was party in the cause, but only the donatar.

Act. Stuart.

Alt. Absent.

*Fol. Dic. v. I. p. 408. Durie, p. 674.*

\* \* \* See Spottiswood's report of this case, No 10. p. 5734.

1634. January 23.

A. against B.

No 282.

A WIFE of Kirkaldie being pursued, and her husband for his interest, for injuring her neighbour with words, calling her witch and whore, before the Commissary of St Andrews, is decerned to make her repentance, and to ask the party pardon, and to pay 40 lib. therefor; 20 lib. to the poor of the parish, and 20 lib. to the party offended; and the husband being charged to pay the money for his wife's misbehaviour, suspends, seeing if she did any wrong to

her neighbour by word, it was without his tolerance done. THE LORDS suspended the letters for the money, but found them orderly proceeded for her personal satisfaction. No 282.

*Auchinleck, MS. p. 268.*

1635. January 30. MITCHELSON against MOUBRAY.

GEORGE MITCHELSON having comprised certain tenements of land in Edinburgh from Gavin Mitchelson, pursued a removing against Bessie Moubray relict of the said Gavin. *Alleged*, absolvitor, because she was infest in liferent in the said tenements by her umquhile husband long before the pursuer's comprising, or yet the debt whereupon it proceeded. *Replied*, She ought to remove notwithstanding of her infestment, because offered to be proved that she compeared judicially before the Bailies of Edinburgh, without her husband's presence, and ratified the said comprising; which must be equivalent, as if she had renounced her liferent infestment, especially seeing she is as well bound as her husband in payment of the debts whereupon the comprising is led. *Duplied*, Not relevant, except she had expressly renounced her liferent infestment; for as to the judicial ratification of the comprising, it can work no more than the comprising itself, which albeit led upon a bond wherein the defender was conjunctly bound with her husband, yet could have no execution against her in prejudice of her liferent, the bond being made *stante matrimonio*, and so null in law; so the bond being null in so far as concerned her, the comprising could not be effectual against her, and consequently her ratification of a null right can work nothing to her prejudice. *2do*, Albeit the right were not null, yet the ratification is absolutely null, being done only before an inferior judge, and not subscribed by the party; otherwise the assertion of an inferior clerk should take away any body's right, whereas by the LORDS statute no act of an inferior court extending above L. 40 is sustained. THE LORDS found the exception and duply relevant.

No 283.  
A relict could not be removed, from lands in which she had been infest in liferent, altho' she had renounced.

*Spottiswood, (HUSBAND AND WIFE.) p. 160.*

\* \* See Durie's report of this case, No 164. p. 5960.

1668. January 22. DOUGLAS against LADY WAMPHRAY.

THE Lady Wamphray being provided in an annualrent out of lands, without respect to a *sors* or stock, and being infest, it was found, that she ought to be liable to taxations and public burdens, being *oner a patrimonialia*, though the said annualrent was payable to her as well infest as not infest. No 284.

*Dirleton, No 143. p. 58.*