

cause the lady, who might pretend the right, never being served nor kened, would not have had right in her own time to pursue thereof herself, and far less her executors could do the same, seeing there is required a brief out of the Chancellery, and a kening by the Sheriff for her title; but here there is no necessity of a title, but only that he was husband, and for the husband's cessation he was all that space out of the country. THE LORDS found the allegiance relevant, notwithstanding of this reply; for they found, that this courtesy being a benefit competent to the husband, who sought not the same, conform to the law and consuetude of this realm, therefore his executors could not seek the same, especially after so long a time, where the mails of the house libelled were uplifted and spent, by virtue of an heritable title, never interrupted within the space of the years acclaimed, and therefore affoizied.

Act. *Stuart & Sandilands.*Alt. *Nicolson & M^cGill.*Clerk, *Gibson.**Fol. Dic. v. I. p. 108. Durie, p. 788.** * * See This case by Spottiswood *voce* COURTESY.1637. *March 21.*LADY MANDERSTOUN *against* L. RENTOUN.

LADY MANDERSTOUN being provided by her husband in her contract of marriage, to her liferent of some teinds, whereof the right was in her husband's person for long spaces to run, and being lawfully divorced from him, she pursues the Laird of Rentoun for payment of the duties of the said teinds, of all years since her divorcement, viz. by the space of three or four years by-past, whereto she acclaimed right, as if her husband were naturally dead: And Rentoun *alleging*, That he had lawfully comprised her husband's right of these teinds, albeit after the contract of marriage, yet before the divorcement, in respect whereof he bruiking by virtue of his public right, *bona fide fecit fructus perceptos et consumptos suos*:—THE LORDS found this allegiance relevant, to import liberation to him from these bygone years acclaimed, notwithstanding that the pursuer's right was by virtue of a preceding contract of marriage.

Act. *Stuart.*Alt. *Nicolson & Craig.*Clerk, *Scot.**Fol. Dic. v. I. p. 108. Durie, p. 840.*1685. *November 27.*HEIR of Kirkland *against* His MOTHER.

FOUND, that an heir pursuing a process of aliment against his mother liferentrix, will get nothing modified for the years preceding the summons, the defender having *bona fide* consumed her whole annuity, these years; and the life-

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No 21.

A lady was provided by her contract of marriage to the liferent of teinds. Having divorced her husband, she claimed from a creditor who possessed by apprising. As to bygone years he was found in *bona fide*.

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