

No 11.

that it was the meaning of the parties, that the said debts should be satisfied, not only by an assignation to the mails and duties, but an heritable right to the lands liferented by the Lady. THE LORDS found, That the Lady Gleneagies, by her consenting to the commission granted by her husband to his cautioners, being *in eandem rem*, did prejudice herself of her liferent right of Gleneagies' estate; unless she would allege, that it was the parties' own fault to whom the commission was granted, that they did not intromit.

Newbyth, MS. p. 72.

1667. February 20.

ANDREW LITTLEJOHN *against* DUCHESS of MONMOUTH.

No 12.

A wife's account of furnishings for herself subscribed by her, found valid, though she was married, and a minor.

ANDREW LITTLEJOHN pursues the Duchess of Monmouth and her curators, for payment of a taylor-account, taken off by the Duchess for her marriage *sow*, to the foot whereof she adjoins these words, 'I acknowledge the account above written, and subscribe the same.' It was *alleged* by the curators, That the Countess's subscription, being after her marriage, can neither oblige herself nor her husband, because wives' obligations are *ipso jure* null. It was *answered*, That the Duchess being *persona illustris*, and the account for furniture to her body at her marriage, her account fell not under the nullity of ordinary obligations by wives, whose bonds are null, not so much because their subscriptions prove not the receipt of the money, as because, being *in potestate viri*, they cannot employ it profitably for their own use, which ceases here, the account being for necessary furnishing, which both obliges the wife and her husband, who is obliged to entertain his wife.

THE LORDS decerned; the pursuer always making faith that it was a just and true account truly resting and owing; and would not put the pursuer to instruct the delivery by witnesses, who are at London; considering especially, that the Duchess being such an illustrious person, her subscription could not be questioned upon so small a matter, as obtained without delivery.

Stair, v. 1. p. 445.

No 13.

A sasine of a liferent to a wife not registered, found valid against the apparent heir of the granter, possessing on a prior disposition.

1667. February 22. COUNTESS of CARNWATH *against* EARL of CARNWATH.

THE Countess of Carnwath insists in her action of poinding the ground. It was *alleged* for the defender, That the Countess' sasine was null, not being registered conform to the act of Parliament. It was *answered*, That nullity cannot be proponed, either by the granter of the infestment, or any representing him, or by any person who is obliged to acknowledge the infestments; but the Earl is such a person that albeit he bruiks by a disposition from his father, yet

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his infeftment contains this exprefs provision, that his father at any time during his life may difpone the lands, or any part thereof, and grant infeftments, tacks, or annualrents thereof; fo that this being unquestionably an infeftment, he cannot quarrel the same upon the not refignation; but if his father had granted an obligation to infeft, the defender could not have opposed the same, much more the infeftment being exped. It was *answered*, That the provision did not contain an obligation upon the defender to difpone, ratify, or do any deed; but left only a power to his father to burden the lands, which can only be understood, being done *legitimo modo*, and therefore the infeftment wanting the folemnity of registration is in the same cafe as if there were no infeftment, and fo is null.

No 13.

“ THE LORDS repelled the defence, and found the sasine valid, as to the defender, in refpect of the foresaid provision in his infeftment.”

Stair, v. 1. p. 456.

1670. January 26.

RELICT of Mr PATRICK SHIELS *against* PARISHIONERS of West Calder.

MR PATRICK SHIELS having been minister of West Calder, he was fufpended by the Synod and Bifhop, for not coming to the Presbyteries and Synods; and the act fufpended him *ab officio*, and bore, that if he did not come to the next Synod, they would proceed to depofe him; yet he was not depofed, but continued three years in the poffeffion of the manfe, glebe, and ftipend; his wife now purfues for an ann. The next intrant being admitted within three months after Mr Patrick's death, alleges ſhe could have no ann, becaufe Mr Patrick was fufpended *ab officio et beneficio*, and produces an act of the Synod bearing fo much; and the relict produces that ſame act, extracted and ſubſcribed by unquhile Mr George Hay, who was clerk at the time, and bears only fufpention *ab officio*, and the intrant's act is extracted by the preſent ſubſequent clerk, and bears *ab officio et beneficio*. The relict *alleged*, That the act produced by her, was the only act intimate to Mr Patrick, and which is ſubſcribed by the clerk, who was clerk to the principal act itſelf, and accordingly Mr Patrick was *in bona fide*, and did poffeſs three years after.

THE LORDS adhered to that act, and found the ann due, and ordained the other act to be kept *in retentis*, that is might be compared with the register, that he might be cenſured if he extracted it wrong.

Stair, v. 1. p. 668.

No 14.

Where a mi-
niſter had
been ſuſpend-
ed, but allow-
ed to continue
in poſſeſſion,
the ann found
due to his
relict, not-
withſtanding
of the act of
ſuſpention.