

yet my Lord Castlehill inclined to refuse action against the cautioner, unless they should discuss both the moveable and real estate of the principal debtor.

Advocates' MS. No. 181, folio 100.

ANENT JUS RELICTÆ.

1671. *June 22, and 24.* ——— *against* ———.

June 22.—A WIFE pursuing for the third of the moveables, It was ALLEGED,—They behoved to have compensation, in so far as they offered them to prove, that in her husband's time she intromitted at her own hand *inscio marito* with such and such goods and gear, and disposed on them, and made use of the price which was never *in rem mariti versum*; and therefore these goods must be imputed to exhaust her third *pro tanto*, especially considering that this defence is founded on that same individual reason, that *actio rerum amotarum* is in the civil law. ANSWERED, that whatever intromission she had with her husband's goods in his lifetime, can never be ascribed in satisfaction of third, or any thing else she can claim to by decease of her husband; because, being in the eye of her husband, it must be presumed to have been with his consent; and they might as well make her liable, and fix a passive title on her for intromitting in her husband's time as do this: both which are such novelties as I believe neither of them were ever heard at this bar before.

They were to have the Lords answer thereupon, *infra No. 182.*

Advocates' MS. No. 180, folio 100.

1671. *June 24.*—IN the foresaid cause at the 22d of June, No. 180, taken to interlocutor, the Lords found intromission by the wife *stante matrimonio* not relevant, unless they would say she was thereby *locupletior facta*; that she conveyed her husband's means, and took bonds therefore in her own name, and applied them to her own use, and so benefited herself to her husband's prejudice.

Advocates' MS. No. 182, folio 100.

1671. *June 29.* ANENT EXTRACTING DECREES OF INFERIOR COURTS.

WHERE a decret of an inferior court, as the commissary's, sheriff's, &c. is suspended, the charger needs not extract his decret, but only produce the said inferior judge's precept for instructing his charge, if the sum contained in the decret be within L.40; but if it be above that sum, then he must produce the decret itself, and the precept will not instruct the charge.

Advocates' MS. No. 183, folio 100.

* See Petrus Peckius *de testamentis conjugum, Libro 2, Cap. 6. Per legem 51 D. de donationibus inter virum et uxorem*, the law honestly presumes all the wife's acquisitions to be *ex re mariti ad evitandam turpis quæstus suspicionem*.