

and militate against the wife as well as against the heir; seeing the debtor did know nothing of the wife's interest, and was only bound to the husband, whom he might intrust to intromit with what was his, upon that assurance, that it would pay his own debt due by bond.

Page 570.

1676. July 25. WILLIAM WRIGHT *against* GEORGE SHEILL.

In a removing, pursued at William Wright's instance, as being infeft upon a comprising in some tenements of land in Leith, wherein George Sheill being likewise infeft, and also pursuing for maills and duties, both causes being advocated;—it was ALLEGED for George Sheill, That he ought to be preferred; because his comprising was at his instance, as assignee constituted by John Sheill in Carlourie, to several debts due by John Sheill in Leith to him; and thereupon having obtained decret, the same was suspended upon compensation, in so far as the said William Wright, cedent, was debtor, by contract of marriage and other bonds, in as much as the sums contained in the comprising; and so in law did extinguish that debt, and the comprising led therefor.

It was ANSWERED, That the compensation could not be now received after sentence; being contrary to the 141st Act, Parl. 12, James VI, and comprising following thereupon, which is now expired.

It was REPLIED, That the decret being for null defence, and suspension raised upon that same reason of compensation, which hath never been distrusted, may be here repelled, as not falling within the Act of Parliament.

The Lords did prefer the comprising; and found, That, after a decret and fifteen years' possession of an expired comprising, compensation could not be received in a real action of removing, or for maills and duties; but prejudice to George Sheill, who was heir to John Sheill, for whose debt the land was comprising, to be reponed against the decret, whensoever he should pursue a declarator of reduction upon the grounds of compensation.

Page 572.

1676. July 26. KINLOCH of GOURDIE *against* STRACHAN.

IN an action at Gourdie's instance, as being infeft in Strachan's lands for security of debts, compearance was made for the relict, who craved to be preferred; because, besides her provision by contract of marriage, she was likewise infeft in remuneration of a legacy left to her during the marriage; because it did accresce to the husband, and so was valid in law, being for a just and onerous cause.

It was REPLIED, That, after marriage, all legacies and moveables which fall to the wife by right of succession, *ipso jure* belong to the husband; for which he is not in the least obliged to grant any remuneration; and, if he grant the