

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

same, it may affect the husband's heirs and executors, but ought not to prejudice the husband's lawful creditors prior to the deed of remuneration.

The Lords did find, That any right, made in remuneration to the wife, could not prejudice his prior lawful creditors; seeing, in law, he was not obliged to grant that deed; and that the legacy which fell to her during the marriage did, *ipso facto*, belong to the husband, and not to the wife: and, therefore, any thing given to her in contemplation thereof, was, in effect, *sine causa onerosa*; and, being voluntary, should not prejudice lawful creditors.

Page 573.

1676. July 26. SIR WILLIAM PURVESS *against* The CONVENTICLERS.

IN a pursuit at Sir William's instance, as his majesty's agent, against conventicle-keepers, for payment of the fines imposed by the Act of Parliament; compareance being made by advocates for the persons cited, as likewise some being called as intercommuners,—by report to the whole Lords, it was ADVISED, If advocates could compear, consult, and plead for them.

It was found, That all who were denounced rebels, and not relaxed, they had not *personam standi in judicio*, and no defence could be proponed by them; and as to the intercommnners, that no advocate could meet or consult with them, all communication being interdicted. Which seemed hard to some; seeing, 64 Act Parl. advocates are allowed to consult and plead for those accused of treason, which is a higher crime.

Page 573.

1676. July 26. SIR ANDREW RAMSAY, Lord Abbotshaw, *against* FRANCIS KINLOCH of Gilmerton.

IN a declarator, at the instance of the Lord Abbotshaw, against Gilmerton, to hear and see it found, that his right to the land of Gilmerton was a redeemable right upon payment of the sum of fifteen thousand pounds, in so far as his right did flow from Mr John Cockburn, by disposition and assignation, which Mr John, when he obtained from Waughton an absolute and irredeemable right, did grant a reversion to Waughton, of that same date, declaring the lands to be redeemable upon payment or consignation of that foresaid sum: likeas, when the said Mr John did dispone his right to the said Francis, with warrandice from his own proper fact and deed, to secure him from all hazard through the reversion he had formerly made to Waughton, Francis did grant and subscribe a declaration, that he should be free of the personal warrandice, in case of redemption by Waughton; and did accept of the said irredeemable right, with the burden of the reversion; which now belonged to Sir Andrew, as coming in the place of Waughton. It was craved that it might be declared, that he had full power to redeem the said lands for the price foresaid.