

with, and partly by what was owing to herself as creditrix by the contract matrimonial, or otherwise. This answer Craigie sustained, and would not receive our new libel *hoc loco*.

Then I offered to find caution for her liferent of the sum in the bond, (which was all her interest in it, for the fee of the sum was uncontrovertedly elided and taken away by the discharge; for the husband could dispose upon the fee of the sum at his pleasure, and his heirs cannot reclaim, but might not evacuate his wife's liferent in it,) upon her delivering up of the bond, reserving repetition *per conditionem indebiti*, as accords of the law. This the Lord Justice-Clerk granted.

Advocates' MS. No. 647, § 4, folio 302.

1677. November 8. BARBARA GRANT *against* JANET CUTHBERT.

THERE was also another suspension, depending betwixt this Barbara Grant and Janet Cuthbert, determined at the same time, whereof the cause was this. Barbara Grant gets a liferent tack of a house in Inverness from her husband, at least so long as she does not remarry. Janet Cuthbert is pursued by her before the Bailies there, for the maill and duty of it, as she who possessed it from 1670, and is decerned in L.20 yearly. Janet having suspended this decreet, Craigie turned it to a libel, in regard, 1^{mo}, The mandate of the procurator compearing for her was not mentioned in the decreet; yet that this is not relevant *separatim, vide supra, June, 1677, M' Mine against Newlands, No. 576. Vide 12th December, 1676, Christian Holmes and Marshall, No. 518. 2do*, That she was decerned for years wherein her husband was living, viz. from 1670 till 1674, promiscuously and confusedly, without distinguishing what years she possessed herself, and what years clad with a husband; and the libel was wrong drawn, craving her to be decerned *nomine proprio* for all, whereas she ought to have been convened for these years *nomine executorio*, which was not done; and though we offered to adminiculate the decreet, by condescending how long her husband possessed, and how long herself since; but it was refused. 3^{tio}, That the term was not circumduced. Whereupon a commission was granted for proving the rent and her possession; who alleged, she behaved to have allowance for reparations.

ANSWERED,—She having right by a liferent tack, was not liable in reparations, but only the fiar.

This was repelled; only necessary reparations, and no other, were sustained.

Advocates' MS. No. 648, folio 304.

1677. November 8. MORISON of Prestongrange *against* His Tenant.

MORISON of Prestongrange sets a verbal tack of a muirland-grass roun he had to a tenant, for 1000 merks by year. In the winter 1673, the storm was so great and long that much cattle in Scotland died, and the labourers of such rouns near lost all their stocking. Amongst the rest, Prestongrange's tenant representing his