

No 284.

* * * Stair reports the same case :

UMQUHILE Wamphray having infest his Lady in 2000 merks of liferent yearly, by her contract of marriage, out of certain lands therein mentioned ; and being obliged to pay her, as well infest as not infest, and to warrant the lands to be worth 2000 merks of free rent, she pursues this Wamphray for payment, who *alleged* deductions of public burdens. It was *answered*, that an annualrent was not liable to public burdens ; for the act of Parliament, 1647, made thereanent, was rescinded, and not revived ; and this provision is payable, not only really, but personally, though there had been no infestment, and that the obligation to make the land worth 2000 merks of free rent, could be to no other end but to make the annualrent free, especially the contract being in *anno* 1647, after maintenance was imposed, which was the heaviest burden. It was *answered*, That an obligation for payment of annualrent, relating to no particular land, could not be burdened with the land, or if it did relate to a stock of money, the ordinary annualrent of the money behoved to be free, but this annualrent relates to no stock, and its first constitution is out of the lands mentioned in the contract ; so that albeit there had been no infestment, it must bear proportionably with the land, and albeit the act of Parliament be rescinded, yet the common ground of law and equity, and the custom thereupon, remains, neither doth the provision (to make the land worth so much of free rent) infer, that therefore the annualrent must be free, which would have been so expressed at the constitution of the annualrent, if it had been so meant.

THE LORDS found this annualrent liable for the assessment, notwithstanding the act of Parliament was rescinded ; and all that was alleged against the same, was repelled. See PUBLIC BURDEN.

Stair, v. 1. p. 511.

1678. November 16. THOMAS SIBBALD *against* JOHN ALVAS.

No 285.

THE LORDS set Alvas at liberty, because his wife had the writs for exhibiting, which he was only decerned *pro interesse*, and he had used endeavours with her to give them up ; but ordained execution to pass against her, though *vestita viro*, as in the case where wives commit delicts.

Fol. Dic. v. 1. p. 408. Fountainball, MS.

1679. January 8. ROBERT SELKRIG *against* MARGARET ALISON.

No 286.

THE LORDS passed a bill of caption, for not finding caution in a lawburrows, against a woman clad with a husband, because she threatened to burn the house

if any other tenant came to it. Though the preparative be bad, the craver's oath was taken for proving her malice, &c.; and so it was of the nature of a *mala fides*.

No 286.

Fol. Dic. v. 1. p. 408. Fountainball, MS.

. Stair reports the same case :

ONE ——— in Glasgow, having obtained letters of lawborrows against a wife in Glasgow, who had threatened to burn his house, which he had deponed upon oath, and having denounced her and craved caption, the clerks of the bills refused to give out caption, because of the privilege of wives not to be taken by caption.

THE LORDS ordained caption to proceed, seeing the horning was not upon a debt, but upon the wife's delinquency and disorder, threatening to burn the man's house.

Stair, v. 2. p. 666.

1682. *March.*

GAY against HERBERTSON.

No 287.

A WIFE having quarrelled her consent *stante matrimonio* to a bond of 2000 merks granted to her husband's nephew, when the husband was on deathbed,

Answered; A wife might validly dispoise her rights to a third party; and the husband being *in lecto*, she had a right to thirds.

Replied; Whatever might be said had she dispoised *principaliter*, she here but consents. *2do*, A wife has no right to thirds till after the dissolution of the marriage.

THE LORDS found, that the wife's consent was not a *non repugnantia*, but that she might quarrel her consent, and claim her whole share, although she granted this consent in contemplation of a disposition of the whole goods, which disposition the nephew renewed *re integra*.

Harcarse, (STANTE MATRIMONIO.) No 870. p. 247.

1682. *November.*

FIN against FIN.

No 288.

THE LORDS inclined to find, that a wife subscribing consent to a disposition of lands, whereof she had the liferent, and not judicially ratifying the same, might revoke, and that *metus reverentialis* was a sufficient ground of fear in wives who had a privilege; for positive *vis et metus* (which is a common reason of reduction to every person) could scarce be proved by wives, who may be privately put under the just impressions of it when no witnesses are present. And when wives judicially ratify, the Judge is so jealous that they are over-