

1735. July 11.

GEMMIL *against* YULE.

No 201.

A wife may exercise acts of ordinary administration with regard to her own property, without her husband's consent; but without his express concurrence, she cannot dilapidate or alienate, whether onerously or gratuitously; and therefore a married woman at her own hand, impledging her paraphernalia for security of money borrowed by her, was found null, and *rei vindicatio* sustained to her representatives against the creditor, without being obliged to pay the debt. See APPENDIX.—The contrary found, No 172. p. 5970.

*Fol. Dic. v. 1. p. 401.*

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S E C T. IX.

Wife's Power of Administration of her own Property, without her Husband's Consent.

1570.

WILLIAM EDMONSTONE *against* LADY EDMONSTONE.

No 202.

IN an action moved by William Edmonstone of that ilk, against his mother, the Lady Edmonstone, for registrating a contract wherein the said Lady, immediately before she was infest in conjunct infestment of the Mains of Edmonstone, obliged her to Walter Edmonstone a bastard brother of her husband's, in name of the family of Edmonstone, that if it should happen her son, the heir of Edmonstone, to come to perfect age of twenty-one years, she should renounce her conjunct infestment of the said lands and mains, reserving to her a reasonable terce of the same. It was opposed against the registration of the said contract by the said Lady, That her son and heir foresaid had no action to pursue the said contract to be registered, because she was not obliged to him in the said contract, and the said Walter, bastard foresaid, might not acquire any obligation to him, not being a person who of the law *potuit alteri acquirere vel stipulare*; whilk allegiance being repelled, in respect he was one of the family, *cujus interfuit procurare utilitatem familiae*, she opposed another exception, that at the time of making the said obligation, she was clad with a husband who had not consented to the said obligation, and so no exception could follow upon it, albeit it were registered. It was *answered*, That she was nothing hurt by the said obligation; for, seeing the said infestment was not given to her *in recompensatione dotis*, but freely *constante matrimonio*, it was to be un-

A Lady, *stante matrimonio*, being infest in some of her husband's lands, obliged herself to restrict the infestment to an aliment when her son should come to perfect age. Found that this obligation was effectual, tho' her husband did not subscribe it.