

No 32.

tend her own character was concerned, since the difference was not great betwixt her entertaining an unlawful amour, and being accessory to her husband's bigamy; that she might in law be repelled *exceptione* from prosecuting an interest where the subsistence of a marriage was not concerned, and from the proof already taken, it ought to be presumed that she was never married, but that the letters produced, and certificate, were granted to the insinuations of an artful woman, by whom Carrick was seduced, on condition not to be used till after his death, as was plainly the intent of that to Ardkinglas, which was never delivered; and as he had been weak enough to grant them, it was easy to antedate them, to serve a purpose.

For Magdalen Cochran, That she might have other interests to entitle her to a proof, to wit, to explain any commerce she might have had with Carrick, and to afford her a defence in case of a criminal prosecution for it. But to this it was *answered*, such proof would be competent to her on a trial.

Such of the LORDS as were for the interlocutor, declared, that whatever was the issue of this question, the daughter would be legitimate from the mother's *bona fides*; and they inclined to think Magdalen Cochran's conduct would be a sufficient ground for Jean Campbell's being preferred to the emolument's due to a widow, but that she could not thereupon be precluded from proving she had really been his wife.

THE LORDS remitted, with an instruction not to allow a proof.

Act. *Lockhart, & H. Home.* Alt. *R. Craigie, & Maitland.*  
*Fol. Dic. v. 4. p. 79.* *D. Falconer, v. 1. No. 204. p. 279.*

\*\*\* This decision was reversed upon appeal.

1750. February 2. Competition CREDITORS OF KERSE.

No 32.

IN a sequestration of a debtor's estate, the debtor *alleged*, That the rents exceeded the interest of the debts; and craved, that part of the estate might be exempted from sequestration for his aliment. All the Creditors consented, and part was accordingly reserved from the sequestration. Afterwards it appearing that there was a considerable deficiency, a question arose between the preferable creditors and those postponed, on whom should fall this deficiency. *Plead-ed* for the postponed, That the reservation being made by the consent of all, should affect all. *Answered* for the preferable Creditors, That they are secured by their diligence; that they consented for themselves, because the estate was more than sufficient to pay their debts. THE LORDS found, that the deficiency fell solely on the postponed Creditors, as it was their interest alone to have opposed or consented to the reservation.

*Fol. Dic. v. 4. p. 78. D. Falconer.*

\*\*\* This case is No 52. p. 6984. *voce* INHIBITION.