

1797. June 15.

MARGARET GRIEVE, and her Husband, for his interest, *against* GEORGE PRINGLE, and his Tutor *ad litem*,

MARGARET GRIEVE, and James Usher, her husband, for his interest, brought a removing against George Pringle, whose father, in 1795, died in possession of a farm belonging to Margaret Grieve.

The pursuers *contended*, That the father had possessed, by a verbal agreement, since Whitsunday 1793, when a written lease in his favours expired.

A tutor *ad litem* was named for the defender, who produced an unsigned draught of a lease, written by Usher, giving the defender's father a lease of the farm for 15 years, from Whitsunday 1793, at an increased rent. He likewise produced several receipts for the rent granted by Usher. One of them bore to be 'for the first half year's rent of the second tack, beginning at Whitsunday 1793;' and the next 'for the second half year's rent of the new tack.' He further averred, that his father, on the faith of his having a lease for a number of years, had expended a large sum on the farm, inclosing, liming, and improving moor; and he *contended*, that, upon the whole, the pursuers were debarred from pleading the defects in the draught *rei interventu*; No 52. p. 4392; 1788, Dr Drummond against Scott, *see* APPENDIX.

The pursuers, on the other hand, maintained, that the draught contained merely the terms on which Usher was willing to grant a lease; that these not being agreeable to the tenant, he preferred possessing by a verbal agreement from year to year, till he should procure another farm, and that the receipts related to this state of possession. They also offered to prove, by a variety of circumstances, the understanding of parties, that there was no lease for a longer period; and denied that any improvements had been made by the tenant upon the faith of there being one.

They likewise stated, in point of law, that this case was very different from those where informal writings had been supported; because, from the scroll not being signed, neither party could suppose it binding; Erskine, b. 3. tit. 2. § 4; and besides, the husband had no power to grant a lease, without consent of his wife.

The Sheriff decerned in the removing.

A bill of advocacy having been passed, the Lord Ordinary reported the cause on informations.

*Observed* on the Bench; The scroll, when taken along with the possession, receipts of the rent, and other circumstances, affords evidence of the understanding of parties, that there was a finished transaction, and therefore is a good defence against the removing. A husband may, without his wife's consent, grant a lease of her property to last during his administration of it.

No 149.

An unsigned draught of a lease, written by the husband of the proprietrix, and delivered to the tenant, followed *rei interventu*, sustained as a valid lease, in a removing brought by the proprietrix, and her husband for his interest.

No 149.

THE LORDS assoilzied the defender.

A reclaiming petition was (4th July) refused, without answers.

Lord Ordinary, Swinton.

Act. Geo. Fergusson, Jo. Dickson.

Alt. G. J. Bell.

Clerk, Menzies.

D. D.

*Fac. Col. No 36. p. 82.*

## DIVISION V.

**A married woman's deeds in what cases effectual against herself, the husband consenting or not consenting.**

## S E C T. I.

**Furnishings to a wife whom her husband is bound to aliment.**

1610. *July 6,* EUSTACHIUS'S WIFE *against* LADY HALYRUIDHOUS.

No 150.

A WOMAN marrying receiving furnishing from a stranger and giving her bond to pay it, the same not being subscribed by the husband, if after his decease, the wife be pursued upon her bond, the LORDS will sustain action for so much as the defender, being sworn, shall grant her to have received, whereof she will not get relief against her husband's heir or executor, except for that which has been converted to their use.

*Fol. Dic. v. 1. p. 397. Haddington, MS. No 1944.*

No 151.

A wife was found not liable for money furnished to her for her aliment in her great necessity, tho' it was advanced upon her own credit.

1629. *December 21.* MR DAVID AITON *against* L. HALKERTON.

THE Laird of Halkerton consigning a sum modified to his wife for her entertainment, which was claimed by the said Mr David, as arrested for satisfaction of a debt of 300 merks owing to him by the Lady, conform to her bond, and which sum he alleged he had furnished to her for her aliment in her great necessity, and which he referred to her oath; and she *contending*, That that sum was in law due to be paid by her husband, who in law was bound to entertain