

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.

No 202.

derstood that the said infeftment was made in respect of the said obligation, and so the said obligation *dedit causam infeodationi*, wherefore she could not come in the contrary thereof, she receiving profit of it; and also, a woman could have no more privilege than a pupil, and if a pupil give a reversion of lands, without that reversion, he would be compelled to keep the reversion, *et per consequentiam*, the woman was in the same case. And also the practise of Scotland was, that all such obligations are made without the presence of the husband to the effect that they should not afterwards allege the same to be done through fear of the husband; in respect of the which reply and reasons, the said exception was repelled.

*Fol. Dic. v. 1. p. 401. Maitland, MS. p. 205.*

1679. February 21.

COCKBURN against BURN.

No 203.

FOUND (which was never decided before) that in the wife's deeds of administration of her own proper goods not falling under communion, the husband's consent is not necessary.

*Fol. Dic. v. 1. p. 401. Fountainball, MS. Stair.*

\* \* See this case, No 29. p. 5793. and No 32. p. 5794.

1680. June 18.

BAILLIE of Torwoodhead against LADY LETHEM.

No 204.

Found that a wife, though living separately from her husband, has no power to oblige herself or contract debt, but can only do those necessary deeds which tend to the administration of her separate patrimony.

IN the charge given by Baillie of Torwoodhead to the Lady Lethem his mother upon her bond, the LORDS declared they would hear this point in their own presence, If a bond granted by a woman cloathed with a husband was so null as that it neither bound her person nor her means, where she lived separate from her husband, (as the Lady Lethem did from Posso,) though not divorced; and where she, by an act of Privy Council, had the free disposal of her former jointure, or of a part of it, or had an aliment which neither her husband's *jus mariti*, nor his creditors, could reach or affect. Some thought the law, (so far as her allowance exceeded a precise aliment) should allow her to contract debt on these jointures, and she might sell her victual, and enter into contract for delivery thereof, upon which undoubtedly the buyer would get execution against her; else it would impede commerce, and none would meddle with her, whereby she might starve. And though the *S. C. Velleianum* annulled womens obligations, yet there was a threefold disparity: 1<sup>mo</sup>, The *Senatusconsult.* only secured wives against their intercessions as cautioners for others. 2<sup>do</sup>, It only related to borrowed money; whereas the bond charged on, is for furnishing necessaries to the house. 3<sup>io</sup>, It did only strike against strangers; whereas this bond is by the mother to her own son, who having a *bulimia et appetitus ca-*