

S E C T. II.

After Proclamation, barred from granting Gratuitous Deeds, or Deeds to the Prejudice of her Husband.

1605. *June 7.* SWYNE *against* SWYNE and LUNDY.

WALTER LUNDY and Elizabeth Swyne, his spouse, pursued John Swyne, to hear and see a bond whereby the said Elizabeth had obliged herself to pay to the said John the sum of five hundred merks, reduced, because it was made by her after, that she was contracted in marriage with the said Walter, and after the first proclamation of their banns, whereupon marriage followed, to the said John, her own brother's son, being next conjunct person to her, in defraud of the said Walter, her spouse affidat, as they termed it, without his consent, and so was null of the law, and should be reduced; *2dly*, Because it was a matter of consequence, extending to five hundred merks, subscribed only by one notary. It was *answered*, That the contract and proclamation of banns made no marriage; and so she being a free person unmarried, might lawfully have bound herself, without his consent, who at that time was not her husband; and *alleged* a practick betwixt Mr John Grahame and James Murray. Next, they offered them to prove, that in a contract of marriage betwixt the said John Swyne and one Philp, whereupon marriage followed, the said Elizabeth Swyne and Walter Lundy, his spouse, being present, both confessed the verity of the debt, in presence of the party, as an instrument taken thereupon would prove. It was *answered*, that the first bond being invalid, could not be supplied by that instrument given by one only notary, seeing Walter Lundy could subscribe; and in fortification of the summons, *alleged* the practick betwixt John Heriot, taylor in _____, and _____, his good son. In respect whereof, the LORDS repelled the exception, and sustained the two reasons of the summons conjunctly to be admitted to probation.

Fol. Dic. v. 1. p. 404. Haddington MS. v. 1. No 798.

1611. *July 5.* FLETCHER *against* _____.

ROBERT FLESCHOUR in Dundee, having contracted marriage with _____, widow in Dundee, and conform to that contract, given infestment of conjunct fee to his future spouse; after all that, and after their banns were once proclaimed, she made dispositions and renunciations of sundry of her conjunct fee lands to her daughters of the first marriage; for annulling

No 238.

After proclamation of banns, the wife can do no gratuitous deed to prejudice her future spouse.

No 239.

Found in conformity with the above.