

S E C T. V.

Effect of rendering the Wife's Heritable Subjects Moveable.

1609. *June 11.* O G I L V I E S *against* EARL OF EGLINTON.

No 31.
Requisition
and horning
used by a
married wo-
man for her
principal
sum, was
found not
to make it
moveable
so as to em-
power her
husband to
discharge it
jure mariti,
without her
consent; but
that she or
her executors
might still
crave it.

O G I L V I E's daughters, and heirs to their mother Martha M'Calzean, and Mr David Ogilvy their father, assignee constituted by the Guidwife of Whitekirk, who were heirs to umquhile Euphan M'Calzean their mother, pursue the Earl of Eglinton, to hear and see a contract made betwixt his umquhile Guidscher and Mr Thomas M'Calzean, for infesting the said Mr Thomas and his heirs in an annualrent forth of the said Earl's lands, which was registered in the said Mr Thomas's time, and transferred to Euphan his daughter in this Earl, to be now transferred in these pursuers.—It was *excepted*, That this contract could not be transferred, because the said umquhile Euphan M'Calzean, proprietor of the said annualrent, and Patrick Moscrop her spouse, having made requisition to the defender for the principal sum, whereupon the said annualrent was granted, and put the said Earl to the horn for non-payment of the same, he had thereafter satisfied the said Patrick, to whom it appertained *jure mariti*, as made moveable by the said requisition and horning, and had reported his acquittance of the said sum.—It was *answered*, That the alleged acquittance of the husband could not prejudge the wife of her heritable annualrent, unless she had renounced and subscribed a formal renunciation.—THE LORDS having reasoned the matter, and considered that the requisition and horning appeared to make the sum moveable, whereby if the husband had past to the horn, it might have fallen under his escheat, so might he have disposed upon it, and discharged it; nevertheless, because he could not have granted a voluntary grant of redemption after her requisition, unless she had consented and subscribed, the LORDS found that the allegiance was not relevant, and decerned the contract to be transumed.

Fol. Dic. v. 1. p. 386. Haddington, MS. No 1613.

1679. *February 21.* C O C K B U R N *against* BURN.

No 32.

A HUSBAND pursued for exhibition and delivery of a bond lent out by his umquhile spouse, which therefore must be presumed to be out of his means. Against delivery it was *pleaded* by an assignee from the wife, That the bond came in place of an heritable bond due to the wife before her marriage, which