

S E C T. IV.

Personal Bond not binding upon a Wife, although her Husband consent.

1611. June 12. L. of ULYSSES-HAVEN *against* LADY BONNINGTON.

A WOMAN being bound by an obligation with her husband to pay a moveable sum, and to relieve those that are his cautioners in the bond; if, after the husband's decease, she be charged to pay the sum, or to relieve the cautioners, the same will have no execution against her, because the bond will not in that point concern her, unless it were for securities to be made forth of her conjunct-fee lands; and albeit the party or cautioner allege and offer to prove that she received the money, was *praposita negotiis*, and had persuaded the cautioners to be bound, and had promised to relieve them, that will not sustain the bond against her.

Fol. Dic. v. 1. p. 398. Haddington, MS. No 2208.

No 160.

A personal bond, granted by a woman *stante matrimonio*, is not effectual against her; and it does not alter the case, whether she be principal or cautioner, or whether her husband consent or not.

1616. February 3. DOUGLAS *against* HAMILTON and ELPHINGTON.

IN an action of removing pursued by Archibald Douglas of Tofts, who had comprised the lands of Limpy from Mr Robert Elphingston and Susannah Hamilton his spouse, upon bonds made by them, and certain creditors from whom Tofts got assignations, and that to the behoof of Samuel Johnston, who was cautioner for Mr Robert and his spouse, and had paid the sums; the LORDS sustained an exception proponed by the said Susannah upon her liferent infeftment, granted before the comprising led, both against her, and upon bonds subscribed by her; *ratio* because the comprising was led *stante matrimonio*, and the bonds could not be obligatory against her.

Fol. Dic. v. 1. p. 399. Kerse, MS. fol. 65.

No 161.

1626. March 24. GREENLAW *against* GALLOWAY.

IN a reduction betwixt Greenlaw and Galloway, wherein Greenlaw pursues for reduction of a bond, made by her umquhile husband and her to Kinloch and his spouse, conjunctly and severally, for a sum of money to be paid by them to the said Galloway defender, at the term contained in the bond; and failing thereof, obliging them to pay annualrent therefor out of their lands, as well not infeft as infeft, the wife, after the death of her husband, desiring this bond to be

No 162.

Found in conformity with No 160. *supra*.