

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.

- No 239. whereof the said Robert moved action, as done in his defraud, and unlawfully, after that he was in effect her husband, without his consent; which summons the LORDS found relevant, and declared the said dispositions and renunciations null.

Fol. Dic. v. 1. p. 404. Haddington MS. v. 2. No 2261.

- No 240. 1633. Jan. 29. SCOT against BROWN.

A BOND made by Mary Hamilton, before her marriage with Scott, her spouse, but after she was proclaimed with her said spouse, found null and of no force to bind her husband, more than the said bond had been given *stante matrimonio*.

Fol. Dic. v. 1. p. 404. Auchinleck MS. p. 17.

* * * See Durie's Report of this Case, No 24. p. 2710.

* * * Spottiswood reports the same case.

1633. Jan. 22. THE LORDS would not find process upon a bond granted by a woman after she was contracted and proclaimed upon her husband. Margaret Scott against Brown and her debtors. The like had been found twice before.

Spottiswood, v. 1. p. 159.

- No 241. 1665. December. The Lady BUTE, against her Son, The SHERIFF of BUTE.

DAME GRISSEL CAMPBELL, relict of the sheriff of Bute, after she was contracted in marriage with Mr Archibald Grahame, now her second husband, and after she was proclaimed with him in the parish kirk, granted a renunciation of a part of her liferent lands; in favour of her son, this sheriff, (the rest unrenounced, being but very mean), whereof she, with consent of her husband, intents reduction upon this reason, That she could do no deed, after she was contracted and proclaimed, without her husband's consent, no more than if she had done it the time of the marriage.

Which the LORDS found relevant, notwithstanding of any thing alleged to the contrary; and specially, That her husband, before the solemnization of the marriage, knew of the granting of the renunciation, and said nor did nothing against the same.

Fol. Dic. v. 1. p. 405. Gilmour, No 171. p. 122.