

the said pain; the LORDS, by interlocutor, sustained the act of the Session, and pecunial pain therein contained; and also it was found, that she should pay the said pain therein contained, of her own proper money, notwithstanding the act was made in her husband's time, the fault also committed *ipso vivo*; and found, that the said pain should noways be exacted of the said husband's executors, *quia noxa caput sequitur*. Kerse, MS. fol. 63.

No 274.

* * * This and the preceding case have no date, but must have been prior to the one following.

1613. *June 16.*HEPBURN *against* NASMITH.

No 275.

IN an action pursued by Elizabeth Hepburn, relict of umquhile Thomas Henderson *contra* John Nasmith, to hear and see her reponed against the consent given to the alienation of her conjunct-fee lands, the LORDS granted absolvitor from the summons as they were libelled, because it was not qualified *relative* that she was compelled *justo metu*, and to remember that the reason of reduction bore a disposition made *stante matrimonio contra jus commune*, and the practice of the country. *Item*, that her husband was *homo ferox*, &c. *3tio*, A revocation. *Item* when we would have replied *super metu*, the LORDS refused.

Kerse, MS. fol. 64.

* * * Haddington reports the same case :

A WOMAN having consented to an alienation made by her husband, of lands wherein she was infeft by her husband, before her marriage, in liferent or conjunct-fee, *intuitu matrimonii*, or an annualrent of 400 merks yearly during her lifetime; the woman, seeking thereafter reduction of the security made by her husband, with her consent, of that tenement, as done by her *metu reverentiali*, for fear of an awful answer, and cruel husband, and upon her revocation made since her husband's decease;—THE LORDS assolizied from the summons, albeit she had never ratified the infeftment by her oath given in judgment; because the LORDS found that judicial ratification not necessary, and were not moved with the reason founded *super metu reverentiali*, unless she had libelled *verum et expressum metum*, by relevant circumstances and deeds, and proved the same by lawful and ordinary means.

Haddington, MS. No 2497.

1613. *July 27.*LO. ROXBURGH *against* LADY ORKNEY.

No 276.

IN an action betwixt the Lo. Roxburgh and La. Orkney, for declaring of her liferent lands, holden of the La. of Brughton, as fallen in his hands by her rebellion, for year and day; the LORDS fand a horning of lawburrows, executed

No 276. against her *stante matrimonio*, to be lawful. *Item*, they fand ane horning executed against her at the instance of ane _____, upon a decreet recovered against her *principaliter*, and against her husband for his interest, null, because, *stante matrimonio*, execution could not follow against her, but against her husband.

Fol. Dic. v. I. p. 408. Kerse, MS. fol. 64.

* * * Haddington reports the same case :

ANE horning executed against the Countess of Orkney, for not finding law-surety, was sustained, albeit her husband was not charged, albeit though alleged that she could not find caution *stante matrimonia*, not being able to give a sufficient bond of relief without her husband ; nevertheless the horning was sustained, as proceeding upon her disobedience ; and her liferent decerned to fall by that horning at the insance of her oye her superior.

Haddington, MS. No 2520.

No 277. 1614. November 16. MELVILLE against LINDSAY.

IN an action pursued by Sir Andrew Melville *contra* Dame Agnes Lindsay, relict of Mr David Melville of Tunghlands, it was found that the said Dame Agnes ought to give her oath, notwithstanding she stood married to William Bruce of Escheall, and that because the process was intented before the marriage.

This was an oath of calumny.

Kerse, MS. fol. 64.

No 278. 1628. March 22. SCOT against CHISHOLM.

WALTER SCOT (assignee constitute by Mr Patrick Shaw to a bond made by umquhile Gavin Elliot of Burgh, and Margaret Chisholm his spouse, whereby they were obliged to infest Mr Patrick in an annualrent of 300 merks out of their lands of Burgh, &c.) charged Margaret Chisholm, relict of Gavin, to pay the said annualrent since the date of the bond. She suspended upon this reason, that the time of subscribing the bond she was clothed with a husband, and did it *ex metu et reverentia maritali*, and therefore there should no personal execution follow upon it against her. *Alleged*, The letters ought to be found orderly proceeded, because she being infest in these same lands out of which the annualrent was due, and that not by virtue of a contract of marriage, but long thereafter, she has possessed the same continually since, and uplifted the duties thereof, and therefore she ought to pay the said annualrent wherein the charger was infest with her consent, which was a tacit revocation of her infestment.