

S E C T. X.

Husband's Consent, how interponed. Natural or Legal Incapacity
in the Husband.

1566. February 12. DUNBAR against MELVILLE.

IN an action of removing, intended by David Dunbar against Helen Meville, his mother, for removing her from a waste tenement, it was *excepted* by the said Helen, That she was infest in liferent in the said tenement; whereto it was *answered*, That she had renounced her liferent of the same in favour of the pursuer her son, the time of his contract of marriage.—It was *replied*, That the time of the renunciation she was clad with a husband, who then was absent, and consented not thereto in the mean time.—It was *answered* by the pursuer, That her said husband was now deceased; and also before his death he ratified the said renunciation.—It was *answered* by the defender, That the renunciation being null from the beginning, as being done by a woman without consent of her husband, could not be valid by that ratification.—THE LORDS found the said renunciation was null from the beginning, and the ratification of the husband coming thereafter without her consent again of new, could not make the same sufficient.

Fol. Dic. v. 1. p. 402. Maitland, MS. p. 209.

*** See Spottiswood's report of this case, No 195. p. 5993.

1626. December 19. MATHEW against SIBBALD.

AN heritable bond, granted by a husband and wife, upon her property lands, found null *quoad* the wife, because it did not bear the husband's express consent authorising her therein.

Fol. Dic. v. 1. p. 402. Durie. Spottiswood.

*** See this case, No 163. p. 5959.

1698. February 23.

LADY COCHRAN, KILMARNOCK, against The DUTCHESS of HAMILTON.

THE LADY COCHRAN, as representing Lady Margaret Kennedy, her sister, pursues the Dutchess for exhibition of a bond of 50,000 merks, due by the family of Hamilton, to her. *Alleged, imo, Instrumentum apud debitorem præsumi-*

No 206.

A wife renounced a tenement in her husband's absence, in favour of her son, which was afterwards ratified by the husband. Found, that such ratification was not sufficient to validate a deed *ipso jure* null; and that therefore a new renunciation, with the husband's consent, was necessary.

No 207.

No 208.

A wife assigned a bond without her