

No 23.

the same nullity being in this same process proponed by way of exception, and found not to be admissable in this place by way of exception, but reserved by way of action, the party ought not to be prejudged, to insist thereon in an ordinary pursuit; albeit the pursuer *contended*, that the said improbation should either also be reserved by way of action, and not proponed in this place; or else, if the defender would propone the same here by way of exception, that thereby he did prejudice himself, and could not thereafter return to pursue upon the nullity thereof; which was repelled. This decision was stopped, and the cause ordained to be heard over again, and the same being reasoned, July ult. 1628, the nullity foresaid was received by way of exception, and admitted to the excipient's probation.

The like done in a declarator, Mr Alexander Burnet *contra* Lady Bonitoun, of her liferent escheat, March 10. 1637, where she first proponing a nullity againg the horning, viz. that she dwelt within another sheriffdom, than at the head burgh, whereof by the horning she was denounced, which was repelled *hoc loco*, and reserved to her to reduce thereupon; and, she thereafter proponing improbation, the LORDS found this allegiance of improbation should not prejudice her, to pursue reduction, upon the ground of nullity, which was proponed by her, and was found not admissable, in this place, by way of exception against his pursuit. See PROCESS—EXECUTION.

Act. *Advocatus Hope & Nicolson.*Alt. *Stuart.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 172. Durie, p. 393.*

No 24.

An exception against a woman's bond, that it was granted in her widowhood, but after proclamation of her banns with a second husband, was found relevant, and received summarily, without necessity of reduction.

1633. *January 29.*SCOT *against* BROWN.

IN a pursuit against one Scot and her Husband for his interest, for payment of L. 100 contained in a bond, given by her in her widowhood; the husband *allegiug* the bond to be null, because it was given by this defender, now his wife, (albeit then a widow) yet it was granted after her banns of marriage with this defender the second husband were proclaimed publicly in the parish church, and marriage was compleated after the said proclamations were ended immediately, so that she could do no deed after that proclamation which might oblige her husband. This allegiance was found relevant, and received summarily against the bond, without necessity of reduction. See HUSBAND and WIFE.

Act. ———.

Alt. *Burnet.**Fol. Dic. v. 1. p. 174. Durie, p. 665.*

No 25.

A preferable creditor, though cited, neglecting to

1670. *February 1.* JAMES WATSON *against* AGNES SIMSON.

AGNES SIMSON being infest by umquhile Alexander Stewart, her husband, in liferent in an annualrent of L. 40 yearly out of the lands of Lamellethem, she,