

possession after her decease, which he once, as husband, had lawfully acquired, and so thereby he could not be convened as universal intromitter, to make him a vitious intromitter, and liable to her debts; but the pursuer might convene him to make forthcoming the particulars intromitted with by him, pertaining to his wife, for payment of that debt, or might confirm herself executrix, as creditrix to her, that she might be paid off her debt, for the which they found the process might be sustained. See PASSIVE TITLE.

No 136.

*Act. Burnet.*

*Durie, p. 422.*

1634. July 19.

HUMBIE against HUME.

HUMBIE being charged to pay to Helen Cockburn, sometime good-wife of Humbie, and to Laurence Hume, her spouse, the sum of 2000 merks, contained in a bond granted by him to them thereupon, at a certain term mentioned in the bond, and to pay annualrent therefor, so long as he retained the sum after the term of payment; and their being one clause subjoined to the end of the bond, whereby it was provided, that it should not be leisum to Laurence Hume, the husband, to seek the principal sum, nor uplift the same during his wife's lifetime, but only the annualrent thereof; in respect of the which provision, the said debtor suspended the said charges execute at the husband's instance, for the said principal sum; whereto the husband *answered*, that that clause was conceived in his wife's favours, and not in favours of the debtor; likeas his wife consented to the charge, and uplifting of the money, and offered to compear judicially, and consent most solemnly thereto.—THE LORDS nevertheless suspended the charge for the principal sum, in respect of the said clause; for they found, that the debtor could not be compelled to pay the same, albeit the wife consented, except that he pleased himself to pay it, so long as the wife lived; for it was found, that the clause was in the debtor's favours, if he liked to make use of it.

No 137.  
A bond bore, that it should not be lawful for the husband of the creditor to uplift the principal sum. Altho' the lady consented, the debtor found not obliged to pay.

*Clerk, Hay.*

*Durie, p. 729.*

1637. March 2.

KEITH against SIMSON.

ONE Geills Keith being infeft with her husband in conjunct-fee of the lands of ———. and after his decease, pursuing Simpson to pay the ordinary duties of the lands two or three years bypast, since the time of her husband's decease, and he *alleging*, That he was heritably infeft in the lands by the L. Dalgety, who was heritably infeft therein by her husband, and by virtue whereof

No 138.  
A wife infeft in conjunct-fee, cannot be prejudiced by an infeftment to a third party flowing from her husband.