

1667. June 4. YOUNG *against* YOUNG.

IN the case Young *contra* Young, it was agitated, whether a husband be liable for his wife's debt before the marriage, being proved no otherways but by her oath during the marriage, if the husband declare he does not distrust her, and believeth she hath declared truth.

THE LORDS did not decide the point; but some were of opinion, that if the husband declare upon oath, that he believeth she did declare truth, he will be liable; in respect that, by the law, the husband is liable for the wife's debt, being legally proved: And the question is only, whether the wife may declare in prejudice of her husband, which she cannot do, because otherways it may be in the power of an untoward wife to undo her husband; which inconveniency ceaseth when the husband declareth he hath no reason to distrust the wife, and that he believeth she hath told truth: The great question will be, whether the husband may be urged to give such an oath of credulity? seeing, whatever a husband thought, yet having an imperious woman, he should be forced to comply with her, and to declare that he believeth her, otherways he would have a miserable life.

Clerk, *Scot.*

*Dirleton, No 71. p. 29.*

1676. February 15. MARSHAL *against* FORREST and her Husband.

IN a pursuit at the instance of a minor against his tutrix, the pursuer having referred to the tutrix's oath, that she had intromitted with diverse particulars belonging to him, the husband of the tutrix *alleged*, That she could not declare in his prejudice. It was *replied*, That the pursuer having an action and *jus quaesitum* competent to him against his tutrix, he could not be in a worse case as to *modum probandi* by the tutrix's superinducing a husband; and that the intromission of a relict, after her husband's decease, being such as to money, bonds, and many other particulars, as could not be known to any person but to herself, nor proved but by her own oath, it were hard that the minor should be prejudged of his probation by her own deed; and the husband is not in the case where a debt is only to be constituted by the wife's oath, seeing the ground of the debt is constituted by writ, viz. by the nomination or letter of tutory; and when there is a pursuit against any person, that person cannot, by an assignation, prejudge his creditor of his probation by oath; and the minor is more privileged, seeing, by the common law, minors have a tacit hypothec of their tutor's estate; and, by our law, they ought to be favoured, at least so far as it should not be in the power of the tutrix to ruin them, by convolving *ad secundas nuptias ante redditas rationes*.

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No 62.

Whether the wife's oath will be evidence of a debt contracted by her before marriage, so as to make her husband liable.

No 63.

A tutrix being afterwards married, whether her oath in a question with the minor, ought to affect her husband.