

No 11.

that it was the meaning of the parties, that the said debts should be satisfied, not only by an assignation to the mails and duties, but an heritable right to the lands liferented by the Lady. THE LORDS found, That the Lady Gleneagies, by her consenting to the commission granted by her husband to his cautioners, being *in eandem rem*, did prejudice herself of her liferent right of Gleneagies' estate; unless she would allege, that it was the parties' own fault to whom the commission was granted, that they did not intromit.

*Newbyth, MS. p. 72.*

1667. February 20.

ANDREW LITTLEJOHN *against* DUCHESS of MONMOUTH.

No 12.

A wife's account of furnishings for herself subscribed by her, found valid, though she was married, and a minor.

ANDREW LITTLEJOHN pursues the Duchess of Monmouth and her curators, for payment of a taylor-account, taken off by the Duchess for her marriage *sow*, to the foot whereof she adjoins these words, 'I acknowledge the account above written, and subscribe the same.' It was *alleged* by the curators, That the Countess's subscription, being after her marriage, can neither oblige herself nor her husband, because wives' obligations are *ipso jure* null. It was *answered*, That the Duchess being *persona illustris*, and the account for furniture to her body at her marriage, her account fell not under the nullity of ordinary obligations by wives, whose bonds are null, not so much because their subscriptions prove not the receipt of the money, as because, being *in potestate viri*, they cannot employ it profitably for their own use, which ceases here, the account being for necessary furnishing, which both obliges the wife and her husband, who is obliged to entertain his wife.

THE LORDS decerned; the pursuer always making faith that it was a just and true account truly resting and owing; and would not put the pursuer to instruct the delivery by witnesses, who are at London; considering especially, that the Duchess being such an illustrious person, her subscription could not be questioned upon so small a matter, as obtained without delivery.

*Stair, v. 1. p. 445.*

No 13.

A sasine of a liferent to a wife not registered, found valid against the apparent heir of the granter, possessing on a prior disposition.

1667. February 22. COUNTESS of CARNWATH *against* EARL of CARNWATH.

THE Countess of Carnwath insists in her action of poinding the ground. It was *alleged* for the defender, That the Countess' sasine was null, not being registered conform to the act of Parliament. It was *answered*, That nullity cannot be proponed, either by the granter of the infestment, or any representing him, or by any person who is obliged to acknowledge the infestments; but the Earl is such a person that albeit he bruiks by a disposition from his father, yet