

her neighbour by word, it was without his tolerance done. THE LORDS suspended the letters for the money, but found them orderly proceeded for her personal satisfaction. No 282.

*Auchinleck, MS. p. 268.*

1635. January 30.

MITCHELSON against MOUBRAY.

GEORGE MITCHELSON having comprised certain tenements of land in Edinburgh from Gavin Mitchelson, pursued a removing against Bessie Moubray relict of the said Gavin. *Alleged*, absolvitor, because she was infest in liferent in the said tenements by her umquhile husband long before the pursuer's comprising, or yet the debt whereupon it proceeded. *Replied*, She ought to remove notwithstanding of her infestment, because offered to be proved that she compeared judicially before the Bailies of Edinburgh, without her husband's presence, and ratified the said comprising; which must be equivalent, as if she had renounced her liferent infestment, especially seeing she is as well bound as her husband in payment of the debts whereupon the comprising is led. *Duplied*, Not relevant, except she had expressly renounced her liferent infestment; for as to the judicial ratification of the comprising, it can work no more than the comprising itself, which albeit led upon a bond wherein the defender was conjunctly bound with her husband, yet could have no execution against her in prejudice of her liferent, the bond being made *stante matrimonio*, and so null in law; so the bond being null in so far as concerned her, the comprising could not be effectual against her, and consequently her ratification of a null right can work nothing to her prejudice. *2do*, Albeit the right were not null, yet the ratification is absolutely null, being done only before an inferior judge, and not subscribed by the party; otherwise the assertion of an inferior clerk should take away any body's right, whereas by the LORDS statute no act of an inferior court extending above L. 40 is sustained. THE LORDS found the exception and duply relevant.

No 283.

A relict could not be removed, from lands in which she had been infest in liferent, altho' she had renounced.

*Spottiswood, (HUSBAND AND WIFE.) p. 160.*

\* \* See Durie's report of this case, No 164. p. 5960.

1668. January 22.

DOUGLAS against LADY WAMPHRAY.

THE Lady Wamphray being provided in an annualrent out of lands, without respect to a *sors* or stock, and being infest, it was found, that she ought to be liable to taxations and public burdens, being *oner a patrimonialia*, though the said annualrent was payable to her as well infest as not infest. No 284.

*Dirleton, No 143. p. 58.*

No 284.

\* \* \* Stair reports the same case :

UMQUHLE Wamphray having infest his Lady in 2000 merks of liferent yearly, by her contract of marriage, out of certain lands therein mentioned ; and being obliged to pay her, as well infest as not infest, and to warrant the lands to be worth 2000 merks of free rent, she pursues this Wamphray for payment, who *alleged* deductions of public burdens. It was *answered*, that an annualrent was not liable to public burdens ; for the act of Parliament, 1647, made thereanent, was rescinded, and not revived ; and this provision is payable, not only really, but personally, though there had been no infestment, and that the obligation to make the land worth 2000 merks of free rent, could be to no other end but to make the annualrent free, especially the contract being in *anno* 1647, after maintenance was imposed, which was the heaviest burden. It was *answered*, That an obligation for payment of annualrent, relating to no particular land, could not be burdened with the land, or if it did relate to a stock of money, the ordinary annualrent of the money behoved to be free, but this annualrent relates to no stock, and its first constitution is out of the lands mentioned in the contract ; so that albeit there had been no infestment, it must bear proportionably with the land, and albeit the act of Parliament be rescinded, yet the common ground of law and equity, and the custom thereupon, remains, neither doth the provision (to make the land worth so much of free rent) infer, that therefore the annualrent must be free, which would have been so expressed at the constitution of the annualrent, if it had been so meant.

THE LORDS found this annualrent liable for the assessment, notwithstanding the act of Parliament was rescinded ; and all that was alleged against the same, was repelled. See PUBLIC BURDEN.

*Stair, v. 1. p. 511.*

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1678. November 16. THOMAS SIBBALD *against* JOHN ALVAS.

No 285.

THE LORDS set Alvas at liberty, because his wife had the writs for exhibiting, which he was only decerned *pro interesse*, and he had used endeavours with her to give them up ; but ordained execution to pass against her, though *vestita viro*, as in the case where wives commit delicts.

*Fol. Dic. v. 1. p. 408. Fountainball, MS.*

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1679. January 8. ROBERT SELKRIG *against* MARGARET ALISON.

No 286.

THE LORDS passed a bill of caption, for not finding caution in a lawburrows, against a woman clad with a husband, because she threatened to burn the house