

1680. *January 27.*LADY MARGARET CUNNINGHAME *against* The LORD and LADY CARDROSS.

LADY MARGARET CUNNINGHAME, as only daughter to ——— Stuart, one of the two daughters of Stuart of Kirkhill, and heir-portioner to him, in respect of the death of Sir William Stuart his only son, pursues an exhibition *ad deliberandum* against the Lady Cardross, Sir James's other daughter, and the Lord Cardross her husband. It was *alleged* for my Lady Cardross, That she could not be obliged to depone of her having writs, which were in the custody of her husband, and in his charter-chest, albeit she hath the same intrusted by him, because the time of citation he was and yet is in England, and a wife's oath cannot be taken in prejudice of her husband, so that her being holden as confest, on her acknowledging the having of the writs, would oblige her husband to exhibit and infer the value of the damage against him, in case of not exhibition. It was *answered*, That albeit the oaths of wives acknowledging debts, cannot be taken in prejudice of the husband, yet there is no such privilege as to the having of writs, but especially where the exhibition is insisted in against the wife, for exhibiting of writs belonging to her *proprio jure*, wherein the husband hath only *jus mariti*, as in this case.

THE LORDS repelled the defence, and sustained the exhibition against the Lady, and ordained her to depone, otherwise to be holden as confest.

Fol. Dic. v. 2. p. 241. Stair, v. 2. p. 748.

* * * Spottiswood reports a similar case, 26th February 1633, Swinton against Westnisbet, No 28. p. 4005, *voce* EXHIBITION AD DELIBERANDUM.

1688. *February 2.* THOMAS WILSON *against* ROBINSON and ABERCROMBY.

A MAN and his wife being pursued upon a note granted by her before their marriage;

It being *alleged* for the defenders, That the note was null, being only subscribed by the initial letters of the wife's name, and the writer not being designed, and having but one witness, a woman; the pursuer offered to prove by the wife's oath, that she signed the initial letters.

Alleged for the husband, That his wife's oath could not operate against him.

Answered, A debt simply constituted by a wife's oath, will not militate against her husband; but here the wife does only adminiculate the debt.

THE LORDS repelled the allegiance for the husband, in respect of the answer.

Fol. Dic. v. 2. p. 241. Harcarse, (STANTE MATRIMONIO.) No 887. p. 252.

No 354.

In an exhibition *ad deliberandum* against a wife, of writs belonging to her *proprio jure*, she was ordained to exhibit upon oath.

No 355.