

S E C T. X.

Husband's Consent, how interponed. Natural or Legal Incapacity
in the Husband.

1566. February 12. DUNBAR against MELVILLE.

IN an action of removing, intended by David Dunbar against Helen Meville, his mother, for removing her from a waste tenement, it was *excepted* by the said Helen, That she was infest in liferent in the said tenement; whereto it was *answered*, That she had renounced her liferent of the same in favour of the pursuer her son, the time of his contract of marriage.—It was *replied*, That the time of the renunciation she was clad with a husband, who then was absent, and consented not thereto in the mean time.—It was *answered* by the pursuer, That her said husband was now deceased; and also before his death he ratified the said renunciation.—It was *answered* by the defender, That the renunciation being null from the beginning, as being done by a woman without consent of her husband, could not be valid by that ratification.—THE LORDS found the said renunciation was null from the beginning, and the ratification of the husband coming thereafter without her consent again of new, could not make the same sufficient.

Fol. Dic. v. 1. p. 402. Maitland, MS. p. 209.

*** See Spottiswood's report of this case, No 195. p. 5993.

1626. December 19. MATHEW against SIBBALD.

AN heritable bond, granted by a husband and wife, upon her property lands, found null *quoad* the wife, because it did not bear the husband's express consent authorising her therein.

Fol. Dic. v. 1. p. 402. Durie. Spottiswood.

*** See this case, No 163. p. 5959.

1698. February 23.

LADY COCHRAN, KILMARNOCK, against The DUTCHESS of HAMILTON.

THE LADY COCHRAN, as representing Lady Margaret Kennedy, her sister, pursues the Dutchess for exhibition of a bond of 50,000 merks, due by the family of Hamilton, to her. *Alleged, imo, Instrumentum apud debitorem præsumi-*

No 206.

A wife renounced a tenement in her husband's absence, in favour of her son, which was afterwards ratified by the husband. Found, that such ratification was not sufficient to validate a deed *ipso jure* null; and that therefore a new renunciation, with the husband's consent, was necessary.

No 207.

No 208.

A wife assigned a bond without her

No 208.

husband's consent, but as to which he had renounced his *jus mariti*. The husband's posterior ratification of the assignation, was found sufficient to validate it.

tur solutum. 2do, She had an assignation from Lady Margaret thereto, with the burden of sundry legacies, which the Dutchess had accordingly paid. *Answered*, The assignation was null, being granted by Lady Margaret when *vestita viro*, and married to Dr Burnet, now Bishop of Sarum, and he is not a consenter for his interest. *Replied*, In his contract of marriage, he renounced his *jus mariti* in this sum; likeas, after the assignation, he has granted a ratification thereof to the Dutchess, which two are sufficient to sustain the assignation. *Duplied*, A husband's concurrence and consent to the legal deeds of his wife, must be specific as to the thing, and interposed *in ipso actu*, and not a general confirmation *ex intervallo*, which does not integrate the act; just as a tutor's concurrence with his minor must be *in ipso actu*, § 2. *Institut. De auct. Tutor.* *Triplied*, The husband may *quandocunque* consent, and in such cases *ratibabitio comparatur mandato, et retrotrahitur*; and though, by the old law, curators could not ratify *ex intervallo*, yet by the law of the Code they might, *l. ult. C. Ad S. C. Macedon.* and Bachovius is of the same opinion; and Sande, *Decis. Fris. lib. 2. definit. 4. tit. 3.* shews, that a husband's consent being only *solemnitatis causa, sufficit si ex intervallo adhibeatur*, and he cites Gomezius and others. THE LORDS found Lady Margaret's assignation sufficiently validated by the antecedent renunciation, and subsequent ratification of the husband.

Fol. Dic. v. 1. p. 402. Fountainball, v. 1. p. 827.

No 209.

1729. June 21. BRIDGET BOLD *against* GEORGE MONTGOMERIE.

IN a reduction, at a wife's instance, of a gratuitous disposition granted by herself, wherein was reserved her own and her husband's liferents; the LORDS found, That the husband being furious at the time of granting the disposition, and continuing so till his death, the want of his consent to the disposition was not relevant to annul the same. See APPENDIX.

Fol. Dic. v. 1. p. 402.

No 210.

1733. June 29. DALL *against* COUNTESS of SOUTHESK.

A WIFE, after her husband's forfeiture, having granted her personal obligation without his concurrence, for a debt due by him, the question occurred, whether this obligation was *ipso jure* null or not? And it was *argued* for the creditor, That this nullity being introduced by our municipal law, could only be in force so long as the civil and municipal rights betwixt husband and wife subsisted, which were entirely dissolved by the forfeiture.—THE LORDS found the defence of being *vestita viro* not relevant, in regard the husband was attainted at the time of granting the obligation. See APPENDIX.

Fol. Dic. v. 1. p. 402.

The Subject HUSBAND and WIFE is continued in Volume XV.