

1749. *November 24.* FORREST *against* EARL OF SUTHERLAND.

No 226.

A WIFE cannot grant a bill for millinery goods furnished to her, or any other security bearing interest, without her husband's consent.

Fol. Dic. v. 3. p. 283. D. Falconer.

* * See this case, No 6. p. 478.

1751. *January 25.* Dame JEAN DOUGLAS *against* ANNE KENNEDY.

No 228.

DAME JEAN DOUGLAS, relict of Sir John Kennedy of Cullean, pursued his executor, Anne Kennedy, spouse to Blair of Dunskey, for her mournings, and obtained decret before the Commissary; which was suspended on compensation; for the Lady had in her hand, when her husband died, money to the amount of about L. 70 Sterling.

Money given to a Lady, on such occasions as letting of tacks, found, after the husband's death, to belong to her, as donations unrevoked.

Answered, The money was the Lady's own, consisting of compliments at several times given her, on occasion of letting tacks, selling cattle, and other such occasions by her husband's allowance.

THE LORD ORDINARY found the letters orderly proceeded.

Pleaded in a reclaiming bill, Allowing the fact, it is not relevant; the compliments were of current money, the property whereof did not rest in the wife, but fell under the husband's *jus mariti*.

Answered, These sums were gifts by Sir John to his Lady, and confirmed by his dying without revocation.

THE LORDS repelled the compensation, and adhered.

Act. Ferguson. Alt. Macdounal. Clerk, Forbes.

Fol. Dic. v. 3. p. 283. D. Falconer, v. 2. No 185. p. 224.

* * Kilkerran reports the same case :

It is common in some parts of the country, where tacks are let, on which grassums are paid, or where a considerable number of cattle are sold, that the taker of the tack, or buyer of the cattle, gives a present to the Lady; and the money made up of these presents, though it be not inter paraphernalia, yet it is considered as a donation by the husband *quæ morte confirmatur*.

And so the LORDS found in this case, which was a process at the instance of Lady Kennedy, relict of Sir John Kennedy of Cullean, against her daughter, executor confirmed to her father the deceased Sir John Kennedy, for payment of her share of the silver plate; against which the defender pleaded compensation, upon a large sum alleged to be found in the Lady Kennedy's hands at her husband's death, which the Lady had upon oath acknowledged herself to be possessed of, but added, that she had got it upon occasion of her husband's let-

No 227. ting tacks, and selling his cattle ; which compensation the LORDS repelled, in respect of the said quality in the oath.

Kilkerran, (HUSBAND AND WIFE.) No 18. p. 270.

S E C T. III.

Where the Wife carries on traffick under the Husband's eye.

1609. November 23. MUIRHEAD against DOUGLAS.

No 228.

IN an action pursued by Muirhead merchant, against James Douglas in Leith, for L. 800, as the price of certain wines, sold and delivered by the said Muirhead to James Douglas's wife ; it was *alleged*, That the summons was not relevant, never condescending that the wine was bought by the said James Douglas's command ; seeing a wife had no power to contract any such debt without her husband's warrant, neither could she bring such debt upon him.—It was *answered*, That she held an open wine tavern, and sold commonly wine by her husband's knowledge, and so being *præposita tabernæ*, the pursuer had good action to pursue the husband for payment of the prices thereof.—THE LORDS found the summons and reply relevant to be proved by witnesses.

Fol. Dic. v. 1. p. 403. Haddington, MS. No 1648.

1610. January 18. A. against B.

No 229.

A PURSUIT being moved against a wife principally, and her husband, for his interest, for payment of three barrikens of claret wine, bought and received by her, the said wife, being a taverner and runner of wine, from the pursuer ; it was *alleged*, That no process could be granted in this matter, because the said block was made by the wife, being married, without consent of her husband, and so was not lawful.—It was *answered*, That she was *præposita tabernæ*, and ran wine publicly, and therefore might lawfully buy wine in great.—THE LORDS, understanding that she had diverted from her husband, and dwelt apart from him, very slanderously and dishonestly, sustained the action against her principally, declaring that the decree should have no action against the husband in his person, lands, or goods,

Fol. Dic. v. 1. p. 403. Haddington, MS. No 1744.