

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*answered*, that an annualrent was not liable to public burdens ; for the act of Parliament, 1647, made thereanent, was rescinded, and not revived ; and this provision is payable, not only really, but personally, though there had been no infestment, and that the obligation to make the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albeit there had been no infestment, it must bear proportionably with the land, and albeit the act of Parliament be rescinded, yet the common ground of law and equity, and the custom thereupon, remains, neither doth the provision (to make the land worth so much of free rent) infer,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THE LORDS found this annualrent liable for the assessment, notwithstanding the act of Parliament was rescinded ; and all that was alleged against the same, was repelled.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