

1617. February. 3.

GORDON *against* GORDON.

No 196.

IN an action betwixt Agnes Gordon relict of John Grierson of Balgaitone, and Elizabeth Gordon, the LORDS found that a woman heretrix might be subject to a clause of requisition in a contract of wadset, made *stante matrimonio*.

*Fol. Dic. v. 1. p. 401. Kerse, MS. fol. 65.*

1672. November 14.

ALEXANDER LOCKHART *against* LADY BUTE.

No 197.

A wife subscribing a wadset with her husband, of her liferent lands, where there was a back-bond to her, and she obliged to pay the back-tack duty, that obligation was found effectual.

THE Sheriff of Bute having granted a wadset of certain lands to Alexander Lockhart, there is in the wadset a back-tack in favour of the Sheriff and his Lady, the longest liver of them two, and both of them are bound to pay the back-tack duty; whereupon he pursues the Lady for the back-tack duties, who *alleged* absolvitor, because her obligation being granted *stante matrimonio*, was null in itself. It was *answered*, That the privilege of wives not to be liable to their obligations, while clad with a husband, hath many exceptions; for if she hath right to any lands in fee, she may take wadsets thereupon, and may be obliged both for the annualrent, or back-tack duty, and for the principal sum, which will be effectual; and if she be a liferenter, she may affect her liferent; or if she consent with her husband to wadset her liferent-lands, and accept a back-tack, she may effectually oblige herself for the back-tack duty; yea though she had no right before accepting of the back-tack, which gives her a real right, and makes her obligation effectual to pay the back-tack duty. It was *replied*, That albeit a wife by accepting of a back-tack, or being obliged therein, may be liable, if after her husband's death she homologate her obligation by possession; but if she do not that, her obligation is void, otherways all wives may be ruined, by being induced by their husbands to become obliged for a back-tack duty, far above the value of the estate; but this Lady never possessed, and is content to renounce all right of liferent she hath.

THE LORDS found, That if the Lady had a right of liferent when she subscribed the wadset, her obligation in the back-tack was not void, as being a wife, whether she possessed or not, albeit she might have abstained, and reduced upon any other ground of lesion.

It was further *alleged*, That the pursuer had declared the back-tack void upon the clause irritant; and therefore seeing the Lady possessed not, nor could possess, the wadsetter having annulled her title to possession, she could not be liable. It was *answered*, That the clause irritant bore expressly, that it was in the wadsetter's option, even after committing of the clause, either to call for his annualrents by the back-tack, or enter in possession; and albeit he had declared the irritancy of the back-tack, he might renounce that which was in his own favour, and return to the said back-tack.

THE LORDS found, That the Lady not having possessed, the wadsetter could not return to the back-tack as to her, for the rent after the declarator.

*Fol. Dic. v. 1. p. 401. Stair, v. 2. p. 116.*