

\* \* \* Gosford reports this case :

No 8.

1669. February 19.—IN an action pursued by Bruce against Stanhope, for paying of certain merchant-ware taken off by one Margaret Sinclair, which were delivered to Stanhope, and made use of by him, his mother, Lady, and children; which action was founded upon these two grounds, That the goods were *in rem versum*, and that the said Margaret was ordinarily entrusted by the defenders for such business, and was several times in the pursuer's shop, present with the Lady, when she took off merchant-ware; likeas, there were many missive letters produced, shewing a constant tract of trust given to the said Margaret in such business: THE LORDS, *ex officio*, having examined Stanhope and his Lady, and seriously considered the dangerous consequence if gentlemen in the country, who have written no order to a merchant to trust any person, should be liable notwithstanding they did declare they sent in money for payment thereof; therefore they did only find the defender liable in so far as he should not instruct, that he has receipts and discharges from Margaret, and no farther.

Gosford, MS. p. 44.

1679. January 11. BOWIE against CORBET and Others.

HAMILTON of Milton having wadset his lands for 10,000 merks, he did thereafter grant bond to Isobel Corbet his wife, bearing, That in lieu of the lands of her contract of marriage, he disposed to her an annualrent of 400 merks out of the wadset lands, and for her security assigned her to the reversion of the wadset. Upon this bond she was infeft; but thereafter, by a contract of wadset with Peter Johnston, who had right to the first wadset, and advanced 2000 merks more, whereupon the wadset was renewed to him, the wife was consenter, and the reversion is provided to Hamilton and his wife, the longest liver of them two, and their heirs. Bowie apprised from the heir of Hamilton the right of reversion, and now pursues declarator, that the reversion so conceived could import no more to the wife but a faculty to redeem upon payment of the sum, that she might enjoy the profits of the land during her life, which she not having done, the faculty was extinct, and the sole reversion belongs to the pursuer, as come in place of the husband, who was fiar in the reversion. It was *alleged* for Corbet of Hadgrey, who had right from the liferenter, That this declarator could only be sustained with the burden of Isobel Corbet his author's right, and that he, as her assignee, might redeem the wadset *ad hunc effectum*, that the wadset being the only middle impediment, hindering the effect of the liferenter's infeftment of annualrent, he might point the ground for all the years she was widow, by which he might apprise, or adjudge the ground right and property, the right of reversion, and all other rights competent to Hamilton, granter of the wadset; which adjudication being upon

No 9.  
Liferenter's  
right of re-  
compense for  
damage by  
want of her  
liferent. See  
Trail against  
Moodie,  
*infra*.

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an infeftment of an annualrent, will be drawn back to the infeftment, and thereby will be preferred to Bowie the appriser's infeftment, against the common author, being after the infeftment of annualrent, as being a real right and *debitum fundi*. It was *answered*, That the liferenter, by consenting to the last wadset, for all right she had, did thereby pass from her prior annualrent, during the standing of the wadset, so that having died before the wadset was redeemed, her interest is extinct. It was *replied*, That the liferenter's consent did indeed restrict her right as to the wadsetter, but not as to her husband; and if she, or her executor, or assignee, were insisting for pointing of the ground upon her annualrent, she might thereupon adjudge the property, and right of reversion, whereupon they redeeming the wadset, they would possess the whole land, ay and while they were paid, not only of the sum in the wadset, but of her annualrent of 400 merks, during her life, after her husband's death.

Which the LORDS sustained, and therefore declared Bowie's right to the reversion, but with the burden of the liferenter's annualrent, that thereby her assignee might by a pointing of the ground affect the reversion, and thereupon pay the wadset sum, and might possess the land till they were both paid of the wadset sum, and of the wadsetter's annualrent.

*Fol. Dic. v. 2. p. 317. Stair, v. 2. p. 669.*

1696. July 16. LEISHMAN against The CHILDREN of NICOL.

No 10.

Where a woman had consented to the sale of her jointure at the entreaty of her second husband, who received the price, she was found entitled to a recompense out of his estate.

HALCRAIG reported Christian Leishman against the children of Harry Nicol writer to the signet, who convened them on this ground; that she being married to their father, and having a jointure of 600 merks, from a former husband, she consented to her second husband's selling the same, whereby she is now prejudged, he being dead, and had left her little or nothing; therefore she having revoked her consent as *donatio inter virum et uxorem*, she ought to have an equivalent liferent secured to her out of her husband's estate. The LORDS found such a revocation could not prejudice the purchaser of her jointure, a singular successor not being concerned therein; but seeing the writ bore, he received the price, they thought it reasonable, that she should be indemnified by an equivalent remuneration out of his estate; for though the natural obligation of gratitude produces no civil coactive effect, yet this being a pure donation, and revoked, both from the principles of the common law and ours, it obliged him and his heirs to remunerate. See 28th June 1675, Arnot *contra* Scot, No 303. p. 6091.; and 22d January 1673, Watson *contra* Bruce, No 344. p. 6129. Yet, on the other hand, she having renounced and judicially ratified, and craved no additional jointure in lieu thereof, it seems not to have been the design or meaning of parties, that she should have any. See VIS ET METUS.

*Fol. Dic. v. 2. p. 317. Fountainhall, v. 1. p. 729.*