

No 191. to prejudge him, though there had been no inhibition served ; far less after inhibition intimated to herself, though not executed at the head burgh where the lands lie.

THE LORDS repelled the allegiance and reply, in respect of the answer and duply.

*Gilmour, No 181. p. 131.*

No 192. 1683. December. MARGARET MARSHALL against GEILLES FERGUSON.

Found in conformity with the above.

A WIFE, with consent of her husband, having obliged herself to pay 500 merks by bond, containing an obligation to infest the creditor by way of annualrent in lands she was heiress of, the creditor after the husband's decease pursued a poinding of the ground.

*Alleged* for the wife ; That she could not (*stante matrimonio*) oblige herself personally, either as principal or cautioner, for payment of sums ; nor could the infestment, which was but consequential and accessory to the personal obligations, militate against her, she having revoked the same, especially there being no judicial ratification.

*Answered* ; Wives may dispoise *principaliter* rights standing in their person, without necessity of judicial ratification. And though the act 83. Parl. 11th James III, mention the case of a wife denuding herself of her liferent, by consenting to her husband's disposition of the fee, and ratifying the same upon oath, the act requires not that to be done, but narrates only *speciem facti*. And though the personal obligation cannot operate against the wife, she cannot except against the real right, which she might validly dispoise, and consequently wadset ; nor can the real right here be understood as accessory to the personal obligation, but must be considered the same way as if it had proceeded by way of contract of wadset.

' THE LORDS repelled the defence, and sustained process for poinding of the ground.'

*Fol. Dic. v. 1. p. 400. Harcarse, (STANTE MATRIMONIO.) No 878. p. 248*

No 193. 1686. February 2. & 3. BEATRIX SOMERVELL against ALISON PATON.

Found in conformity with Elies against Keith, No 191. p. 5987. and with the above.

BEATRIX was provided to a liferent in her contract with umquhile Lawrence Johnston ; and Paton, her mother-in law, proprietrix of a tenement, being obliged to infest her son Laurence, and the said Beatrix his spouse in that tenement, and being now charged to do it, she suspended on these reasons ; *imo*, That this obligation to infest was relative to another obligation on her in that same contract, to pay her son 4000 merks ; but that principal obligation is *ipso*

*jure* null, being granted by a wife *stante matrimonio*; *ergo*, the accessory one is also null. *2do*, That this is a donation by a wife to her husband, being to his eldest son, who is *eadem persona*, and so is revocable, and she had *de facto* revoked it now. *Answered* to the *first*, Though the personal obligation of a woman *vestita viro* be null, yet where she is principal disponent, with her husband's consent, of rights out of her own lands, that is valid. See Stair's Instit. B. 1. tit. 4. § 16. To the *second*, This was neither to the husband nor son, but to a third party, the son's wife; and so it is not *donatio revocabilis*. This being reported by Redford, the LORDS repelled the two reasons, and found the obligation on the wife's lands valid and effectual, and not revocable.

*Fol. Dic. v. 1. p. 400. Fountainball, v. 1. p. 400.*

\* \* \* Harcarse reports the same case :

GEORGE JOHNSTON and Alison Paton his spouse, who was an heiress infert, having, in their son's contract of marriage, obliged themselves, conjunctly and severally, to pay a sum to him and his wife at the first term after the granter's decease; and the mother having obliged herself, with consent of her husband, to dispoise their whole tenements in favour of their said son and his wife, in conjunct fee and liferent; the father and son being dead, the son's wife pursued her mother-in-law upon her obligation to dispoise.

*Alleged* for the defender; That the bond containing a personal obligation *stante matrimonio*, it could not oblige her. *2do*, The obligation being in favour of the son, who is *eadem persona* with the father, is *donatio inter virum et uxorem*.

*Answered*; Though personal obligations to pay do not oblige a wife, yet an obligation to dispoise a right in her person is valid. And as her actual dispoising, with consent of her husband, would have been valid, so an obligation to dispoise must oblige her to fulfil. *2do*, The wife who is a stranger here, pursues, and not the son's heirs.

THE LORDS decerned against the mother-in-law to dispoise, in so far as concerned the daughter-in-law's liferent.

*Harcarse, (STANTE MATRIMONIO.) No 882. p. 251.*

1715. June 14.

JANET KER against SHEARERS.

JAMES HODGE, and Janet Ker his spouse, grant an heritable bond to Andrew Shearers, whereupon infertment followed, in a tenement of the husband's provided to the wife in liferent; whereupon Shearers the creditor having led an adjudication, his daughters, as having right from him, pursue mails and duties.

Janet Ker the wife compeared, and craved to be preferred by virtue of her liferent, her husband being dead; and *alleged*, That though she concurred

No 194.  
Adjudication upon a personal obligation, granted by a woman *vestita viro*, null.