

1696. February 14.

LADY RIRIS *against* INGLIS and WOOD.

RANKEILOR reported the competition between the Lady Riris, on her liferent right, and Helen Inglis and Katharine Wood, as having right to Lentrone, Provost of St Andrew's, his wadset of these lands. The question was, if the Lady's infestment was clad with possession before the wadsetter's possession. It was acknowledged, that a husband's possession is the wife's; and farther, that the husband was not in possession; yet if his father, by his reserved liferent in the disposition, which he gave to his son of the fee, was in possession, it was sufficient to validate and clothe his good-daughter's right with possession; though that seemed to be *duplex filio*: But the father-in-law having consented to Lentrone's wadset, this was found a denuding him, so far as his possession could not accrete to his son's Lady, in prejudice of that right. See 21st February 1672, Reid, No 38. p. 1305.

*Fol. Dic. v. 1. p. 90. Fountainball, v. 1. p. 711.*

No 40.

A father disposed the fee to his son, reserving his own liferent. His possession was found sufficient to clothe his daughter-in-law's right with possession; though that seemed a *duplex filio*.

1698. January 11.

STODHARD *against* OSWALD.

CROCERIG reported Marion Stodhard against Sir James Oswald of Fingleton. It was a competition betwixt a public infestment on an adjudication, and an infestment of annualrent, which Sir James contended was base, never clad with possession, and so could never have preference to him. *Alleged*, It was sufficiently clad with possession, in so far as Ninian Henderson her father-in-law, in her contract of marriage with his son, reserved his own liferent, so his possession was hers.—*Answered, 1mo*, Whatever a reserved liferent may operate *inter extraneos*, yet a reservation in favour of a father has never been sustained to clothe a base right granted to his son, so as to exclude lawful creditors. *2do*, Wherever possession of one clothes the right of another, *fictione juris*, because I could not possess any other way but by them, the rights in that case must be of a homogeneous nature; but here they are wholly heterogeneous; for the reserved liferent is of the property, and the defender's right is an infestment of annualrent.—THE LORDS preferred Sir James Oswald's public infestment, and found the father's reserved liferent did not clothe the base right with possession.

The ground upon which the Lords decided for Sir James was, that the liferent was burdened with her annuity, and so she had access to point the ground, and neglected it; otherwise, a right of property includes the annualrent, the first being the *jus nobilius*, as was found November 23. 1664, Nisbet *contra* Murray, No. 36. p. 1303.

*Fol. Dic. v. 1. p. 90. Fountainball, v. 1. p. 811.*

No 41.

Found in conformity with No 32. p. 1300.