

1703. February 12. ALEXANDER DEANS *against* MARGARET ALLAN.

ALEXANDER DEANS, merchant in Prestonpans, having wared L. 230 Scots on the beating and repairing of a salt-pan there, belonging to one Thomson who was abroad, Margaret Allan, wife to the said Thomson, as factrix for her husband, and as she was provided in the liferent of the said salt-pan, grants Alexander Deans a bond to pay the said sum, or else to put him in possession of the said pan, ay and while he be paid out of the profits thereof. And she being charged on this bond after her husband's decease, she suspends, *imo*, That the personal obligation to pay was *ipso jure* null, being granted by her when *vestita viro*, as the bond itself bears.—THE LORDS assoilzied her from the obligation to pay.—Then, *2do*, she *alleged*, That she was not bound to put him in possession, because it was granted by her without her husband's consent, and so nowise obligatory.—*Answered*, *imo*, She had a factory from him, which supplied his consent. *2do*, She was liferentrix of it, and so might bargain and oblige herself *quoad* that, seeing heiresses and liferenters may validly bind and give heritable rights out of their lands, as was found, 15th December 1665, *Ellies contra Keith*, No 191. p. 5987.—*Replied*, *imo*, No factory produced; and *esto* it were, that can only oblige the husband and his heirs, but not the wife. *2do*, Her being liferentrix says nothing, unless it had been done with consent of her husband, as has been decided, 24th March 1626, *Greenlaw contra Galloway*, No 162. p. 5957.; and 30th January 1635, *Mitchelson contra Moubray*, No 164. p. 5960.—Some of the LORDS thought, if, when her husband died, these reparations were beneficial to the relict at her entry, she ought to be liable; but this was not true in fact, for the husband lived a considerable time after; nor was it relevant, for what if one had bestowed cost on a liferenter's house before her liferent existed? Neither law nor reason would make her liable for these reparations. Neither have tradesmen a hypothec for their work in the subject, as was in the Roman law, but only come in conform to their diligence affecting the same. And the LORDS, in this case, found her not liable to enter the charger to the possession of the salt-pan now liferented by her, though she had obliged herself thereto, seeing it was done without her husband's consent.

No 187.

A bond, granted by a wife while her husband was abroad, for the expense of repairing a salt-pan, of which she was provided to the liferent after the husband's death, was found null.

*Fol. Dic. v. 1. p. 400. Fountainball, v. 2. p. 180.*