

a rank and dignity to be kept up by their husbands, which singular purchasers have not; and this was found in Lawson against Gilmour, *supra*. 2do, The lands in question are burgage lands, wherein no courtesy takes place.

No 7.

THE LORDS, in respect the tenements were burgage lands, repelled the defender's allegiance founded on the courtesy, and found he could have no title thereto.

Act. Alex. Falconer.

Alt. Leith.

Clerk, Robertson.

Fol. Dic. v. 1. p. 205. Bruce, No 101. p. 123.

1716. June 15.

HAMILTON against BOSWELL.

AN heiress's infestment, upon a service to her predecessors, being quarrelled by a reduction after her death, upon alleged nullities, in order to disappoint her husband of his right of courtesy, the LORDS found, that the heiress's infestment not having been quarrelled in her lifetime, was sufficient to support the courtesy, upon this ground of equity, that had it been quarrelled during her life, these nullities might and would have been supplied. See APPENDIX.

Fol. Dic. v. 1. p. 205.

No 8.

Courtesy may have place where the defunct heiress was not habilely infest.

1717. January 3.

ANNA MONTEITH against Her nearest of KIN and CREDITORS.

ANNA MONTEITH being heiress of certain lands which descended to her by her mother, and there being several personal debts to which she would be liable as heir, she, and her father as tutor and administrator, pursue a declarator, 'That it is necessary to sell the above inheritances, or a part thereof, for discharging the debts.'

It was *alleged* for the pursuer's friends on the mother's side, That there was no necessity of a sale, because, by a scheme of the debts and inheritance, it appears that there was a sufficient fund for payment of the yearly annualrents, and a valuable superplus.

It was *answered*, The pursuer's father had right to the inheritance by the courtesy of Scotland during his life, and was not in law obliged to pay either principal or annualrents of personal debts, whereby the inheritance would come to be affected with debts, and wholly exhausted, unless a part were sold; and the father, for the good of the pupil, was willing to concur in the sale, and lose the benefit of his courtesy of such lands as should be sold: Whereupon the question arose, 'Whether a husband possessing by courtesy was obliged to pay the current annualrents of his wife's personal debts?' And the father did allege, that it was of his own good-will, for the advantage of his pupil, that he

No 9.

A husband possessing by the right of courtesy, is liable for the annualrents of the personal, as well as real debts.