

The debtor *alleged* he could not be liable to give up the stock to the charger, being only liferenter, neither would her discharge, or renunciation of the wadset liberate him and his estate, but only a renunciation of the heir; neither did the charge at the liferenter's instance, take away the annualrent, and make the principal sum moveable, unless it had been at the fiar's instance. The charger *answered*, That she being conjunct fiar, was not a naked liferenter, albeit it resolved in a liferent; and therefore she craved that it should be declared by the LORDS, that she had power to uplift the stock, and to re-employ it as formerly, and that her discharge and renunciation should be declared to be sufficient to liberate the debtor and his lands, which being so found by the LORDS, the debtor's apparent heir being called, would be an irreducible and sufficient ground of liberation.

THE LORDS declared as aforesaid, but before extract, ordained the conjunct fiar to give bond for re-employment of the sum to herself in liferent, and to Beverly's heirs in fee; which bond they ordained to be presently registered, and kept by the clerk, in respect none appeared for the heir.

*Fol. Dic. v. 1. p. 549. Stair, v. 1. p. 67. & 136.*

1662. June 28.

DORATHY GRAY *against* OSWALD.

UMQUHILE Mr John Oswald having married Dorathy Gray, in England, did, at the time of their contract, grant an English bond of L. 1,000 Sterling, to the said Dorathy's mother, and on Wilson, *ad opus et usum dictæ Dorathæ*, the condition of which obligation is, that if Mr John shall pay the said entrusted person the sum of L. 600 Sterling, or shall secure the said Dorathy in lands or chattels, worth the said sum of L. 600 in his lifetime, or by his testament, then he shall be free of the L. 1,000; Mr John granted assignation to the said Dorathy of 5,500 merks due to him by the Earl of Lauderdale, bearing expressly the same to be for implement of the bond, and assigning both principal sum and annualrent. Dorathy confirmed herself executrix to her husband, gives up this bond, and obtains decret against Lauderdale, who calls Dorathy on the one part, and the apparent heir, and creditors of the said Mr John, on the other part. It was *alleged* for the apparent heir and creditors, That they ought to be preferred to the stock of the sum, because the clause, *ad opus et usum*, could only be understood to be for Dorathy's liferent use, and not in fee, and as for the assignation it was on death-bed, and so could operate nothing in their prejudice. It was *answered* for the said Dorathy, That she opposed the clause, the meaning thereof was no other, but that her mother and Wilson were creditors in trust to the use and behoof of her, and could not be a liferent right, because it was provided to her, her heirs, executors, and assignees; and as to the assignation, though on death-bed, yet it may very well be used as an adminicle to clear the meaning of the parties.

No 25.

No 26.

Although it was offered to be proved, that a wife who had been married in England, would, by the interpretation there, of the words of the deed, '*ad opus et usum*,' have only had a liferent use; she was allowed the full right here, as the subject was to heirs and assignees.

**No 26.** THE LORDS found the clause to carry the stock of the money, and preferred Dorathy. And it being thereafter offered to be proved, that by the custom of England, such clauses signify only the liferent use, the LORDS repelled the allegiance, in respect of the clause, being provided to Dorathy's heirs and assignees, and in respect of the clearing the meaning thereof by the testament would not delay the process upon the proving the custom of England, the matter being clear in contrary.

*Stair, v. I. p. 117.*

1680. June 30.

JORDAN *against* HOMES.

**No 27.**

WHERE a sum is taken payable to a woman in liferent and her son in fee, the LORDS found the money payable to the liferentrix, but that she could not lift it without citing of the fiar to see it re-employed, or caution found; but granted a diligence to cite him in that same process; and found it not enough that the grandfather offered to consent to the uplifting of it by her.

*Fol. Dic. v. I. p. 549. Fountainhall, MS.*

1702. December 17.

OGILVY *against* STORMONTS.

**No 28.**

An heritable debt being payable to one in liferent, and another in fee, the Lords found a requisition null, because used only at the instance of the liferenter, and not of the fiar, although, by the clause of requisition in the bond, the liferenter had power to uplift and re-employ for his liferent use.

OGILVY of Ascreavy grants an heritable bond for 2000 merks to James Stormont in liferent, and Thomas his son in fee, containing a clause of reversion on premonition of 60 days, and also a clause in favour of the annualrenters, empowering them to use requisition in the same manner, and thereupon they are infest. Ascreavy in August 1700, uses an order of redemption against them, and premonishes them to receive their money on Martinmas thereafter; and in respect of their absence, consigns it, and pursues a declarator, and obtains a decret of redemption in July 1701. Stormonts, on this, do likewise use a requisition and charge for their money, and suspend his decret of declarator; which brings in the whole affair. *Objected* by Stormonts, That Ascreavy's premonition was illegal, it being only made to the son, and not to the father, liferenter, though the clause of reversion bears, that both ought to be premonished. *2do*, The attendance and consignation was on the day after Martinmas, and so is disconform to its warrant, which bears Martinmas day. *3tio*, His instrument bears, that he only attended betwixt ten and twelve, whereas the clause is between sun-rising and sun-setting. *4to*, The decret of declarator is stolen forth in absence, and not put up in the minute-book. *Answered* to the *1st*, It was personally intimated to the son, and he required to advertise and premonish his father, which was sufficient. To the *2d*, Martinmas that year falling on a Sunday, he could not use the order and consignation that day, but did it the