

having brought means with her to her husband, it was lawful to the husband, *quocumque tempore* before his death, to grant a provision to his wife, either before or upon deathbed, for her necessary aliment, and to supply the want of a contract of marriage. The Lords, before answer, ordained the defender to condescend what means her husband got with her, where, and by whom paid, and how she is able to prove the payment thereof.

No. 161, Page 114.

1665. *November.* ELIZABETH RIG *against* THOMAS BEG.

IN the declarator of redemption, in June last, pursued by Thomas Beg against John, his son, thereafter compeared Elizabeth Rig, spouse to the said Thomas, who was infest in the liferent of the said tenements for implement of her contract of marriage, and to whom, for security of her liferent, the said reversion and order of redemption was assigned; and it was alleged for her, That she concurred to the pursuit. Answered, That she could not concur, being clad with a husband, who could not give her *personam* to pursue where he himself is excluded. 2. Her assignation was not registrate in the register of reversions. 3. Her infestment was not *habilis modus*, to transmit the right of reversion in her favours, without an assignation registrate. Replied, That the wife, with or without the husband's concurrence, might defend and make good her own right. 2. A disposition and procuratory of resignation, whereupon infestment followed, needs not to be registrate: her seazine being *debite* registrate, at least in the town of Edinburgh's books; which is sufficient. 3. Such a right denudes the granter of *omne jus*, and consequently of the right of reversion; as has been often found. The Lords, having heard the cause *in præsentia*, sustained the order at the wife's instance, *ad hunc effectum* that she may bruik her liferent after her husband's death, in case she survived him.

No. 165, Page 116.

1666. *January.* MR GEORGE CLAPERTOUN *against* The LAIRD of TORSONCE.

THERE was a comprising deduced at the instance of the Laird of Torsonce, or James Brown of Colstoun, to his behoof, of the lands of Wyllicleugh, against Ramsay, as lawfully charged to enter heir to the deceased Sir George Ramsay of Wyllicleugh, his father, and George his brother, in June 1616. After which, there was a second comprising led, within fourteen days, at the instance [of] Mr Alexander Kinnier: to which Mr George Clappertoun, having right, used an order of redemption of the first comprising against Torsonce, and others having interest, before Whitsunday 1664; to which term the legal reversions of all comprising, whereof the legal was not expired in January 1662, was prorogated by Act of Parliament 1661. And now he craves that the order may be declared, and that the first comprising may be found satisfied, either by disposition made by the first compriser, of some of the lands, the worth whereof doth far exceed the sum due by the first comprising, [or] by his intromission with the

rents and duties of the lands within the years of the legal, as it is now prorogated. It was answered by Torsonce, That the libel is not relevant, unless the pursuer would allege that the comprising was satisfied within seven years after deduction thereof; for, by the law then standing, after the expiring of the seven years, the lands became his irredeemable property, and it was thereafter lawful to him to dispose thereupon at his pleasure: likeas, though he did dispone the lands of Wyllicleugh to the apparent heir for 11,000 merks, and did retain the lands of Kippilaw for making up what he wanted of the sums comprised for, yet the late Act of Parliament can only be extended against such first comprisers who have the right standing in their person for the time; and not against such who, after expiring of the seven years, had disposed the comprised lands before that Act. 2. Any intromission the compriser, or any others having right from him, had before the said late Act of Parliament, and after the said seven years, being of the rents *bona fide* uplifted and consumed as his own, by the law then in force,—he cannot be countable therefor. It was replied, That the prorogation granted, by the law, to Whitsunday 1664, is without any distinction of comprisings, and is to have all the effects as the comprisings and legal reversions would have had, if the legal had not expired before the same term to which they were prorogated, being dated seven years only before, according to the former law;—so that, whatever sums of money or rents the compriser, or any having right from him, has uplifted, and what lands have been disposed for the price, they are to be countable therefor, and the lands to be redeemable; and the price paid for the lands is to be counted also; and, if it be not satisfied by the defenders' intromission, the pursuer may be liable, *pro tanto*, in place of the sums comprised for in the first comprising. And, upon the same ground of the prorogation, the defenders ought to count for the rents as well after as before the expiring of the legal, by the former law. The Lords found the comprising redeemable, notwithstanding of the foresaid disposition; and the compriser is to be satisfied of 11,000 merks, to be allowed always in part of the sums comprised for; and the defenders to be countable for the whole bygone maills.

No. 177, Page 127.

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1666. February. The TOWN of GLASGOW against The TOWN of DUMBARTOUN.

IN the mutual process betwixt the town of Glasgow and the town of Dumbartoun, wherein there had been a very long debate;—the Lords found, That the charter granted by King James VI. to the town of Dumbartoun, *anno* 1609, containing many particular customs, of all ships arriving on the water of Clyde, and, namely, within the stations of Portrige, Inchgreen, and New-work, could not prejudice the town nor burgesses of Glasgow, being a free burgh royal; and the river being *flumen publicum*, where, upon the naked account of passing up and down, anchoring, or transporting their goods out of their ships, by boats, to Glasgow, no such dues ought to be exacted to their prejudice, and are only to be exacted in harbours, *ad sustinenda onera* of the harbour. And, although Dumbarton has been in possession, ever since, of most of the dues, yet the Lords found their possession, from time to time interrupted, *via facti*, and *via juris* also.

No. 185, Page 134.