

No 191. to prejudge him, though there had been no inhibition served ; far less after inhibition intimated to herself, though not executed at the head burgh where the lands lie.

THE LORDS repelled the allegiance and reply, in respect of the answer and duply.

*Gilmour, No 181. p. 131.*

No 192. 1683. December. MARGARET MARSHALL against GEILLES FERGUSON.

Found in conformity with the above.

A WIFE, with consent of her husband, having obliged herself to pay 500 merks by bond, containing an obligation to infest the creditor by way of annualrent in lands she was heiress of, the creditor after the husband's decease pursued a poinding of the ground.

*Alleged* for the wife ; That she could not (*stante matrimonio*) oblige herself personally, either as principal or cautioner, for payment of sums ; nor could the infestment, which was but consequential and accessory to the personal obligations, militate against her, she having revoked the same, especially there being no judicial ratification.

*Answered* ; Wives may dispoise *principaliter* rights standing in their person, without necessity of judicial ratification. And though the act 83. Parl. 11th James III, mention the case of a wife denuding herself of her liferent, by consenting to her husband's disposition of the fee, and ratifying the same upon oath, the act requires not that to be done, but narrates only *speciem facti*. And though the personal obligation cannot operate against the wife, she cannot except against the real right, which she might validly dispoise, and consequently wadset ; nor can the real right here be understood as accessory to the personal obligation, but must be considered the same way as if it had proceeded by way of contract of wadset.

' THE LORDS repelled the defence, and sustained process for poinding of the ground.'

*Fol. Dic. v. 1. p. 400. Harcarse, (STANTE MATRIMONIO.) No 878. p. 248*

No 193. 1686. February 2. & 3. BEATRIX SOMERVELL against ALISON PATON.

Found in conformity with Elies against Keith, No 191. p. 5987. and with the above.

BEATRIX was provided to a liferent in her contract with umquhile Lawrence Johnston ; and Paton, her mother-in law, proprietrix of a tenement, being obliged to infest her son Laurence, and the said Beatrix his spouse in that tenement, and being now charged to do it, she suspended on these reasons ; *imo*, That this obligation to infest was relative to another obligation on her in that same contract, to pay her son 4000 merks ; but that principal obligation is *ipso*