

S E C T. V.

Whether a Wife can be cut out of her Interest by lapse of time during Coverture.

1675. November 16. TAYLOR and RONALD against GIBSON.

MARGARET GIBSON being pursued by Jean Ronald for a debt due by David Carnegie her first husband, as being executor or intromitter with his goods, did transact with the said Jean, and she and her second husband gave bond for L. 140, and obliges 'herself to dispoise her right of liferent to a tenement in Brechin for the said L. 140, containing a reversion for payment of that sum, if 'it were paid at a certain term.' The said Jean Ronald, and Robert Taylor her husband, obtained decret of declarator before the Lords, that they had right to the said Margaret Gibson's liferent, by virtue of the said obligation; and in the process of declarator, the Lords granted a time to purge the failzie by payment of the sum, which being past without payment, they declared. The said Margaret Gibson hath raised suspension and reduction of this decret, on this reason, That the obligation to dispoise the liferent was but in security of L. 140, and so it was but a clause irritant; and albeit the Lords had given a term to purge, the failure therein was not through the fault of the said Margaret Gibson, who was *vestita viro*, being then married to a second husband, who now is dead, and thereby *non valebat agere*, and so ought yet to have a time to purge, at least present payment should be accepted.—It was answered, That after decret of declarator against the said Margaret, and her husband, for his interest, in which a term was assigned to her to purge, and it circumduced, there is no ground to repon her, as being then *vestita viro*; because wives, as to their heritable or liferent-rights, *quæ non transeunt in jus mariti*, have no privilege, but are convenable and decernable as others; and it was never sustained that a wife *non valebat agere*, because she had a husband; yea if it were sustained, law would be ineffectual as to all wives, so long as their husbands lived.

THE LORDS repelled the reasons, and found the letters orderly proceeded.

Fol. Dic. v. 1. p. 407. Stair, v. 2. p. 368.

* * * Dirleton reports the same case :

A DISPOSITION being made by a woman clothed with a husband, of her liferent of a tenement, redeemable upon the payment of a certain sum within a short term therein mentioned allenary, a decret of declarator of the expiring of the reversion was obtained; and thereafter, a decret of removing at the in-

No 264.

A declarator of irritancy past against a wife *stante matrimonio*. After her husband's death, she raised a reduction upon this ground, that during the marriage she was not *valebat agere*, and now she was ready to purge the irritancy. This reason of reduction was repelled.

No 264.

stance of the person infest upon the said disposition, against the said woman and her husband ; whereof a reduction and suspension being raised, upon that reason, that the suspender was clothed with a husband the time of the expiring of the said reversion, and of the said decreets, so that *non valebat agere*, nor to use the order of redemption ; and the husband's negligence in suffering the reversion to elapse, and the said decreets to be obtained, ought not to prejudice her ; seeing she was content yet to purge by payment of the sum contained in the reversion ;

THE LORDS, upon debate amongst themselves, had these points in consideration, viz. *1mo*, Whether or not a redemption, being limited and temporary, (as said is) in the case foresaid, there may be yet place, after the elapsing of the term, to purge ; and some of the LORDS were of the opinion, that reversions, being *stricti juris*, there can be no redemption, neither in the case of legal nor conventional reversions, after elapsing of the term ; nor place to purge ; but this point was not decided. *2do*, It was agitated, whether a woman, clad with a husband, may be heard to purge, upon pretence that *non valebat agere* ; as to which point, some of the LORDS did demur, and it was not decided ; the letters being found orderly proceeded upon another ground, viz. in respect of the decret *in foro contradictorio*. But it is thought, that such reversions should expire even against women clothed with husbands ; seeing it cannot be said that they are in the case of minors, and *non valentes agere*, because they are clothed with a husband ; and by the contrary, having the assistance and advice of their husbands, they are more able to go about their affairs ; and if their husbands refuse to concur, they may apply to the Lords, and desire to be authorised by them.

Reporter, *Strathurd.*Clerk, *Monro.**Dirleton, No 297. p. 145.*

1710. July 25.

JEAN CHALMERS, Relict of DAVID LYON of Banchrie, *against* His CREDITORS.

No 265.

A relict raised a reduction of her contract of marriage, upon minority and lesion. Objected, she had not revoked and raised reduction *intra annos utiles*.
The Lords

JEAN CHALMERS, heiress of the south part of the lands of Wester Banchrie, and the mill thereof, yielding seven chalders of yearly rent, some months after her marrying David Lyon, without any contract, when she was about 15 years of age, entered with him into contract, whereby she disposed her heritage in favour of him and her in conjunct-fee and liferent, and the heirs and bairns to be procreated betwixt them in fee : and he obliged himself to provide 6000 merks of his own money, with the conquest during the marriage, to him and her, and the longest liver in conjunct-fee and liferent, and the heirs and bairns of the marriage in fee ; providing, that if David Lyon happened to die before Jean Chalmers, without children, she should not only liferent the 6000 merks