

No 175. or homologation, after her husband's death, she may validate such obligation; yet, if she dies without taking any steps to remove the nullity, it must continue and be pleadable by her heir after her death, equally as it would have been by herself during her life.

"THE LORDS find, That an adjudication cannot proceed on the personal obligation of a wife *stante matrimonio*; therefore, sustain the defences, assolzie, and decern."

Act. *J. Douglas.*

Alt. *M. Laurin.*

Clerk, *Tait.*

Fol. Dic. v. 3. p. 284. Fac. Col. No 40. p. 107.

No 176.

1791. Feb. 21. HARVEY and FAWEL *against* TRUSTEES of CHESSELS.

HELEN CHESSELS, wife of James Scot, inherited from her father a considerable heritable property, on which the *jus mariti* of her husband had been excluded in the event of his bankruptcy, an event which actually happened. Afterwards Helen Chessels bound herself, with consent of her husband, in a cautionary obligation for their son. In an action brought on this obligation, the Lords found that it was ineffectual. The only way in which a wife's personal obligation can be made good, is by shewing that the money has been *in rem versum* of the wife. — See APPENDIX.

Fol. Dic. v. 3. p. 284.

S E C T. V.

Bonds of Provision by Wives.

No 177.

A married woman became bound to provide a wife in a tocher, in consequence of which the husband granted her a suitable life-rent. The obligation was

1579. December 20. PRIMROSE *against* LADY ROSSYTH.

There was ane HENRY PRIMROSE in Culross that pursued the Lady Rosseyth, now spouse to the Abbot of Dunfermline, to hear and see a contract betwixt the said Henry and the said Lady registered, into the whilk the Lady was bound to pay certain sums of money for tocher good, *et nomine dotis* of Redheugh maiden to the said Lady and spouse to the said Henry. The Lady *alleged*, that the contract ought not to be registered, and also the Commendator of Dunfermline spouse to the said Lady *alleged*, the contract ought not to be registered, because the same was done without the consent of the husband, then, at the making thereof, in life. To this was *answered*, that her hus-

band was then new departed, *et sic res venit in hanc causam, a quo incipere potuit*; and also the sums which the Lady was bound to pay, were *in nomine dotis*, and the said Henry had given the said woman state of the land in hope of the said sums. THE LORDS found, by interlocutor, that the contract ought not to be registered at the instance of the said Henry, against the said Lady, because it was made without consent of her husband, being in life the time of making the same

No 177.
found null,
as being executed without consent of the grantor's husband.

Fol. Dic. v. 1. p. 399. Colvil, MS. p. 274.

1680. July 22. BAILLIE against The LADY LETHAM.

THE Lady Letham having granted bond to her second son the Laird of Torwood-head, to furnish him weekly a certain proportion of vivers, and to prosecute his pleas at law, he gave a back-bond, that so soon as his pleas were determined, he should pay her the ordinary rate for the vivers she was to furnish. He charges upon this bond. She suspends and raiseth reduction, upon this reason, that it is a bond granted by a wife *stante matrimonio*, which is null, and hath no effect against her, either in her husband's life, or thereafter. The charger answered, That this bond bearing expressly an obligation upon the medlers with the rents to pay this provision weekly, was no more than a pension, and that for an equivalent satisfaction, which a wife might validly do, as well as she might sell her victual, or grant tack of her liferent-lands reserved, seeing she hath a separate provision modified by the council, in which she hath the full administration, and as to which she is in the same condition as a widow. The defender replied, that our law hath made no exception, but declared all bonds granted by wives null, either for payment of sums, or doing of deeds relating to their heritage; which being a privilege to secure them against their weakness and impressions by their husbands, hath been ever preserved without exception, and that even though the husband should consent; and this case is more favourable than ordinary, this Lady having got aliment, because of her husband's atrocity, which is but moderate, and could not be affected by her unquestionable debts contracted before her marriage, being appointed *ad quotidianum victum et amictum*, and so could be affected with no obligation, but for these ends. It was duplied, that this aliment is 14 chalders of victual, and may be retrenched in favours of a son, who though married, his whole estate is appraised and possess, and himself is an indigent person, under continual sickness, and weakness of mind.

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A wife's obligation to furnish, weekly provisions to her son, and to prosecute his pleas, on condition of being repaid at the end of the pleas, was found null, though she was possessed of a sum not affectable by her husband.

THE LORDS found the bond null, notwithstanding of the specialities alleged, but recommended to the Lady *ex pietate materna*, to supply her indigent son, in so far as her own aliment could allow it.

Fol. Dic. v. 1 p. 399. Stair, v. 2. p. 787.

* * * See Fountainhall's report of this case, No 204. p. 4998.