

1675. February 24.

HAMILTON against CHIESLY.

MARION HAMILTON being provided, by her contract of marriage with Mr Lewis Somervel, to be infeft in the annualrent of a fum of money; after his deceafe ſhe charged his heir to fulfil the obligement, and infeft her in an annualrent in her husband's lands; and the apparent heir having renounced, ſhe obtained adjudication of the lands, for implement of that obligement.—Mr William Chiefly having apprised the ſame lands, purſues her to remove; ſhe excepts, upon her adjudication. He *replies*, That her adjudication is null; in ſo far as ſhe has not only adjudged for the bygone of her annualrent, but for the ſame in time coming; which being before the terms, at which it will be due, is in ſo far null; but ſhe ought to have liquidate the value of her liferent, and adjudged therefor.—It was *duplicated*, That adjudication being an extraordinary remeed, where appriſing was not competent, ſhe hath followed the right method; for the heir was not obliged to buy her liferent, or pay a price therefor; and, therefore, ſhe could not liquidate the value thereof againſt him, ſeeing it was a preſtable deed; for he might have infeft her in the annualrent; and, therefore, as in the caſe of a diſpoſition unfulfilled; when all diligence is done, the Lords do adjudge the lands diſponed; the ſame ought to be done, for implement of an obligement to infeft in an annualrent; which, though it be general, without mentioning of particular lands, ought to affect the lands of the perſon obliged, or any part thereof; and therefore the ſame was orderly adjudged for the annualrent bygone, and in time coming.

THE LORDS ſuſtained the adjudication.

In this caſe it was *alleged*, That the ſaid Marion Hamilton had conſented to a wadſet-right, to which the purſuer had now right; and to a bond whereunto he had alſo right; which thereby muſt have preference to her right.—It was *answered*, That her conſent to the bond was *in recenti luctu*, within two or three days after her husband's death, ſhe being then bedfaſt; which the law allows as a ſufficient reaſon to annul the deeds of women in that condition. *2do*, If need be, it is offered to be proven, that her conſent was elicit by fraud and circumvention; in ſo far as the writ was not read to her; but repreſented to her to be of another tenor, and to her advantage.

THE LORDS repelled the allegiance upon *luctus*, as not warranted by our law or cuſtom; but ordained witneſſes to be examined as to the *circumvention*. (See FRAUD.)

*Fol. Dic. vol. 1. p. 4. Stair, v. 2. p. 327.*

No 3.

An adjudication in implement ſuſtained, though led, not only for bygone, but for annualrent in time to come.