

No 249.

\*\*\* Forbes reports the same case :

IN a reduction at the instance of Anne Byers, against Alexander Reid her husband, for reducing their contract of marriage upon minority and lesion; the LORDS sustained this reason of reduction, that the pursuer had, in the 17th year of her age, disposed the property of her heritage to the defender, who was *obæratu*s, and not in a condition to secure any suitable provision to her effectually.

Forbes, p. 275.

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 S E C T. II.

Whether a Wife may prosecute legal Diligence, and appear for her interest in a Process, without concourse of her Husband.

1541. *January 23.* LAIRD OF CRAIGIE *against* HEPBURN.

No 250.

THE Laird of Craigie warned Jean Hepburn spouse to Peter Oliphant, to flit and remove from certain lands. Compeared the said Jean, and *alleged* the lands to pertain to her in conjunct fee, as spouse to umquhile the Laird of Craigie. It was *answered*, That she ought not to be heard to make any defence, because Peter her husband was at the horn, *et vir est caput uxoris*, and he being in life, she had no power to stand in judgment. She *answered*, That she claimed not the right of these lands by Peter Oliphant her present husband, but by her first husband, *quia sunt donatio propter nuptias et fundus dotalis*, which in no ways could be taken away from her for his default. THE LORDS, notwithstanding, admitted her to stand in judgment, and propone her defences.

*Fol. Dic. v. 1. p. 406. Sinclair, MS. (Pitmedden's Copy.) p. 159.*

1620. *June 17.* HALIBURTON *against* —

No 251.

FOUND, that a woman pursued with her husband, may defend herself, albeit the husband be debared by horning.

*Kerse, MS. fol. 65.*