

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 *obæratuſ*, and not in a condition to secure any suitable provision to her effectually.

Forbes, p. 275.

 S E C T. II.

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