

likeas her consent ought to be attributed to the legacy, which was a remuneration thereof.—THE LORDS would not sustain the reason of reduction *ex luctu*, as not being founded in our law, where we differ from the civil law, which makes it a ground of nullity; as likewise they found, That a right being made to a third party, should not be quarrelled upon that head; but they ordained the contract of marriage with her husband to be produced, that they might know if the tack given to her was in satisfaction of any provision made in her favour, or if it was a mere donation; in which case they found, whereas it was revocable, so *de facto* it was revoked by the testament, and her consent subscribed by her, against which she could never be reponed. Upon the 22d of the same month, the contract of marriage being produced, with the tack made to the wife, which did bear only in farther surety of her provision, but not for implement thereof, the LORDS did find, That her consent to the right of that tenement did prejudice her of her tack, but not of her full provision of her contract of marriage, to which the heir of her husband was only liable.

*Gosford, MS. No. 668. p. 393.*

1679. January 8. Lady KNOX against ARBUTHNOT of KNOX.

THE Lady KNOX being infeft in certain lands conquest by her husband during the marriage, 'to him and her in conjunct-fee,' pursues removing; comparance was made for Arbuthnot of Knox, to whom Colonel Barclay of Knox, (having married his only daughter), disposed to him the lands in question; *imo*, By a minute of contract, and then by an extended contract, in which minute the lady is a subscribing consenter; *2do*, This infeftment being taken by the lady in liferent, is a donation between man and wife, revocable and revoked by the contract of marriage, disposing the same lands, without reserving the wife's liferent. It was *answered* to the *first*, That the lady having been only consenter in the minute of contract, and not in the extended contract, it could not import further than her consent to the marriage, and not to all the clauses in the minute, disposing the estate without reservation of her liferent, whereby she would be excluded from all provision; for the minutes of contracts of marriage do only contain the materials agreed on, but the extension and formality thereof in law, in cases especially not obvious to a wife, are reserved to the extended contract, in which the lady is not mentioned as a consenter, much less doth she consent 'for all right of liferent,' &c. As to the *second*, The putting the lady in liferent of the lands conquest was no donation revocable, because there was produced a bond by the Colonel, obliging himself to infeft his future spouse in the conquest. It was *replied*, That this bond being between the contract and marriage, was a donation between man and wife; for marriage is reckoned from the contract, and not from the solemnizing; for, after the contract, all deeds done by the wife in prejudice of the husband are null, and

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No 83.

A wife consented to a minute of her daughter's contract of marriage, but not to the principal contract. Found that she did not thereby confirm a clause in the minute, which disposed an estate without reservation of her own liferent, to which she had been formerly provided. She was considered to have consented only to the marriage.

No 83.

*a pari*, the husband from that contract is reckoned husband, and donations granted by him are revocable; besides, that this bond is false, and under improbation, as being made up long after the contract of marriage, to sustain the wife's infestment, not only for what is provided in her contract, but for the whole conquest.

THE LORDS found, that a wife's consent to a minute of a contract of marriage of the daughter, she not being consenter in the principal contract, did only import her consent to the marriage, and not to the disposing the estate, without reservation of her liferent. They found also, that the infestment taken originally to the husband and wife, during the marriage, though it did not mention to be in implement of the bond, or any other cause, yet that it was in effect the implement, and not a donation; but superseded to give answer to that point, whether the bond being after the contract and before the marriage, were revocable, as a donation between man and wife, or were null as *contra bonos mores*, till the improbation of that bond were discussed.

*Fol. Dic. v. 1. p. 439. Stair, v. 2. p. 666.*

1687. July 9.

A. against B.

No 84.

THE LORDS found, that a wife's consenting to her husband's testament, wherein he leaves sundry legacies, does not preclude nor debar her third part of the moveables, because the legacies do not affect her share, but only the dead's part, and so they are not *super eodem subjecto*.

*Fol. Dic. v. 1. p. 438. Fountainball, v. 1. p. 465.*

1739. July 14. and December 11.

BUCHAN against Sir WILLIAM COCKBURN.

No 85.

Consent of a proprietor to a disposition, implies a conveyance of all right in the consenter's person, but the consent of a creditor implies only a *non repugnantia*.

THE COURT was unanimous, that the consent of a proprietor to a disposition *a non domino*, implies a conveyance of the property, as what can have no other intention or meaning; but found, that a consent by a creditor only, implies no more than a *non repugnantia*, as what could only be the intention of it. Notwithstanding it was observed, that Lord Stair, in several places, says, That consent is the same thing as if the consenter were resigner; and if consent imports a conveyance in its own nature, which was admitted when by the proprietor, so a consent of a creditor should in its own nature import a conveyance of such right as was in him; just as a disposition of the property, when *a non domino*, will imply a conveyance of every lesser right that may be in him, as of a tack or annualrent; and upon which ground the LORDS, by their first interlocutor in this case, had found, That Sir William Cockburn the creditor's consenting to the disposition by Langtoun, the proprietor, to Mr George Buchan, im-