

No 288. awed and forced to do so, without daring to reveal the same, that he makes them swear, that they were not compelled to subscribe the deed to be ratified. Although, *de praxi*, where wives dispoñe rights in their person, or consent thereto, they do not always judicially ratify.

Harcarse, (STANTE MATRIMONIO.) No 873. p. 247.

. Sir P. Home reports the same case :

DAVID FIN of Whitehill having granted a wadset of the lands of Whitehill to Margaret Fin, his sister, in liferent, and to Margaret and Anna Baillies, her daughters, in fee, for the sum of 1200 merks, affected with a back-tack; and the reverser having failed in payment of the back-tack duty, the said Margaret Fin pursues a declarator of expiring of the back-tack. *Alleged* for the defender, That the back-tack could not be declared null, because it did not contain a clause irritant, in case of not payment of the back-tack duty, that the tack should be null and void; but all that the defender could be liable to was the payment of the tack duty. *Answered*, That albeit the back-tack contain not a clause irritant, yet must *de jure*, and by the nature of all tacks, in case two terms run in the third unpaid, the tack becomes null and void, as in the case of feu infestments, which is *perpetua locatio*, which is clear by many decisions; Hope in his title of Wadsets, John Dishington against the Lady Pittenweem, *voce* WADSET; William Hamilton against the Earl of Argyle, *IBIDEM*; and, by a late decision, in February 1627, Lawson against Scot, *voce* TACK; albeit there was only but one year's tack duty resting; and back tacks, contained in contracts of wadsets, are of the same nature as other tacks.—THE LORDS sustained the declarator for declaring the tack null, albeit it wanted a clause irritant, unless the defender purge the payment of a tack duty betwixt and a certain day and find caution for payment thereof in time coming.

Sir P. Home, MS. v. I. No 262.

1683. *March.* BAILIE GARTSHORE *against* ELIZABETH BRAND.

No 289.

A WIFE bound in a bond with her husband to pay a sum, competing with the creditor upon her right of jointure as prior and preferable,

Alleged for the creditor; That the wife had judicially ratified the bond upon oath; and although such an oath hath been found not to hinder to deny and defend against payment, yet it imports a *non repugnantia*, that the wife shall not obtrude her rights (though otherwise preferable) against him, when he was debtor to her husband's estate.

THE LORDS ordained the point to be heard in presence, if the oath imported a *non repugnantia*; but it appearing, from the ratification, that it was only

judicial, and not upon oath, the debate was delayed, and the matter ended in a transaction. No 289.

Harcarse, (STANTE MATRIMONIO.) No 877. p. 248.

* * * See Fountainhall's report of this case No 102. p. 987.

1685. December. The LADY BATHGATE against COCHRAN of BARBACHLAW.

No 062.

THE Lady Bathgate pursuing a poinding of the ground for her jointure, it was *alleged* for the other creditors, That she had disposed a part of her jointure to Bredisholm for her husband's behoof, which must operate a renunciation.

Judicial ratification does necessarily import that the deed ratified had been delivered.

Answered for the pursuer; Though she signed such a disposition, it was never delivered, but is still in her own hand. And, *2do*, Though it had been delivered, it was revocable, as *donatio inter virum et uxorem*.

Replied; The pursuer having appeared before a judge, and ratified the disposition, promising upon oath never to come in the contrary; that was equivalent to a delivery, and she cannot revoke in respect of the oath.

Duplied; The ratification being a part of the conveyance for making it sure, may be, and usually is done before delivery; and so cannot import delivery. *2do*, The ratification is not sufficient, it not being subscribed by the wife, but only by a judge, and such a one too as had no jurisdiction in the place where it was done, viz. a sheriff-depute within the abbey.

Triplied; Oftentimes the wife doth not subscribe the ratification, but only the judge, even when he is not *pro tribunali*. And the wife swearing she was not compelled, clears that she was under no impressions of fear.

THE LORDS found the ratification did not import delivery; but did not proceed to the other points.

Harcarse, (STANTE MATRIMONIO.) No 880. p. 249.

* * * Sir Patrick Home reports the same case :

1685. January.—THE Lady Bathgate being infeft upon her contract of marriage in an yearly annualrent of 2500 merks, having pursued a poinding of the ground, and there being compearance made for — Cochran of Barbachlaw, it was *alleged* for him, That the Lady did dispose 1300 merks of the said annualrent in favour of Muirhead of Bredisholm, and did ratify the disposition judicially; and it is offered to be proved by Bredisholm's oath, that the disposition was to the behoof of her Ladyship's husband, and so was a remuneration and extinction of the annualrent *pro tanto*. *Answered*, That the disposition was never a delivered evident, being still in the pursuer's own hand; and, if it had been delivered, as it was not, yet being *donatio inter virum et uxorem*, it was revocable, and she now revokes the same. *Replied*, That the pursuer cannot