

creditors, seeing the passing of one adjudication would oblige all the creditors to do the like, whereby expenses would be accumulated, and the estate rendered less able to pay all the debts; and the defender was content to have debated the pursuer's interest, which they refused. The Lords sustained the defence for the personal creditor, if instantly verified.

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1685. December. CHRISTIAN MICHIE against Mr JOHN RICHARDSON.

A WIFE, by her contract of marriage, being provided to a liferent of the whole conquest, with a provision that she should do no deed without consent of Sir James Dundass of Arnistoun;—the husband acquired tenements to the value of £700 or £800 a-year; and she, a little before his death, renounced and restricted the liferent to £300, free of all public burden, in favours of her husband, and ratified the deed judicially upon oath. She and her second husband raised reduction of her renunciation, upon these grounds:—1. It was done, *stante matrimonio*, and so revokable; 2. It was done without consent of Sir James Dundass, to whom, by the husband's consent, she was interdicted. Answered, She cannot be reponed against her ratification by oath, which is *vinculum spirituale*; 2. The provision in the contract imports no interdiction, nor is it conceived *irritanter*. Replied, By our law, wives can do no deeds unless authorised by their husbands or friends, and the husband could no more authorise her *in rem suam*, than a curator could authorise his minor; 2. By the civil law, wives, in respect of their frailty, have a privilege of revoking all their deeds of intercession, either for their husbands or third parties, *per senatusconsultum vel leianum*; and they are secured against all deeds in favours of the husband *per orationem Antonini, ne mutuo amore se spolient*. And the oath doth not hinder revocation of deeds in favours of the husband, more than the revocation of personal obligations to pay sums, which do not oblige the wife, though granted to third parties with her husband's consent, and ratified upon oath; 3. The Act of James III, Par. 11, respects only the case of alienations made to third parties, with the husband's consent, which, if ratified by oath, are not revokable; and doth not concern deeds granted to the husband, without being lawfully authorised; 4. The provision in the contract, requiring Arnistoun's consent, was, in effect, a real interdiction, *quoad* the husband who consented to it, needing no publication. And it was *contra fidem et in fraudem contractus*, for him to do any deed contrary to the provision, which was expressly designed to obviate his taking advantage of his wife. And whatever might be said of a wife's renunciation to her husband, upon equal and rational terms, where she reserves a competent subsistence; here there is enorm lesion *ultra dimidium*, the wife having restricted her liferent of an opulent conquest to £300. Duplied, By our law, wives, though they cannot oblige themselves personally for sums, they may validly contract, and denude themselves of rights standing in their persons, either in favours of their husbands, or other third parties with consent of their husbands. And though deeds, with consent of their husbands, in favours of third parties, judicially ratified without oath, are considered as revokable, the interposing of an oath excludes all revocation. And the difference betwixt a wife's

personal obligation to pay a sum, and her disposition or renunciation of rights in her person, lies in this, that the former is, *ipso jure*, null without revocation, and cannot be confirmed by an oath, which is not *modus inducendi, sed adjuvandi obligationem*; whereas a wife's deed, in relation to an estate in her person, subsists in law, and is confirmed *morte*, if not revoked; and so is confirmable, and rendered irrevocable by an oath. And as *sacramenta puberum* hinder restitution upon minority, so a wife's oath ought to exclude her revocation: for, in the opinion of all lawyers, privileges introduced *primario in bonum privatum*, may be passed from by judicial renunciations, which many think sufficient without oath: but the adjecting of an oath makes them altogether irrevocable. 2. The parallel doth not hold between husbands and curators; for though a wife, in duty and decency, should do nothing without her husband's consent, that is not necessary to her deeds, except in so far as he may be concerned or prejudged;—for processes at wives' instance against their husbands have been sustained; witness the Lady Wamphrey's reduction of her contract of marriage upon minority;—and inhibitions at a wife's instance, against her husband notoriously *vergens ad inopiam*, for implement of her contract of marriage, where no person was named therein, at whose instance execution should pass. 3. Though the *species facti*, in the Act of Parliament, be a disposition to a third party, the *ratio decidendi* was, that the wife could not contradict her oath, which, *in materia licita*, is *vinculum spirituale*; and, to restore her against, were *præbere occasionem perjurii*. 4. The provision in the contract imports only a personal obligation; and, not being conceived *irritanter*, it cannot have the effect of interdiction, even against the husband, far less against the son's wife, who is a singular successor. Again, the wife's renunciation was rational; in so far as, there being nothing to maintain five children during her life, she would have been obliged for an aliment to the heir, and also to have entertained the rest in her own family, *jure naturali*; and the public burdens being very great, the restriction to £300, free of all burden, was equal and rational. And the same being confirmed by an oath, she cannot be restored against it by any Christian judicatory, especially that provisions of conquest are not so strict obligations but that the husband has a liberty, notwithstanding, to do all rational deeds. And it was found, That a father might provide his unprovided children, of the first marriage, out of the conquest provided by the contract to the children of the second marriage. The Lords having considered the case, and the circumstances of it, they repelled the reasons of reduction, in respect of the answers; and assoilyed from the reduction.

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1685. December. JOHN BLAIR *against* BAILIE GRÆME.

JOHN Blair having raised a summons of *rei vindicatio* of a Polish bridle, worth £50 sterling, against Bailie Græme;—it was alleged for the defender, That *rei vindicatio* is only competent *contra possessorem*, which the defender is not. 2. The said bridle was lawfully pointed and appraised to the defender from Thomas Douglass, his debtor, in satisfaction of a part of the debt, and was thereafter, *bona fide*, disposed on as lawfully pointed, the defender having reason to think it belonged to Thomas Douglass, since possession of moveables pre-