if any other tenant came to it. Though the preparative be bad, the craver's oath was taken for proving her malice, &c.; and so it was of the nature of a *mala fides*. No 286.

Fol. Dic. v. 1. p. 408. Fountainhall, MS.

*** Stair reports the same case:

ONE ——— in Glasgow, having obtained letters of lawborrows against a wife in Glasgow, who had threatened to burn his house, which he had deponed upon oath, and having denounced her and craved caption, the clerks of the bills refused to give out caption, because of the privilege of wives not to be taken by caption.

THE LORDS ordained caption to proceed, seeing the horning was not upon a debt, but upon the wife's delinquency and disorder, threatening to burn the man's house.

Stair, v. 2. p. 666.

1682. *March.* GAY *against* HERBERTSON.

No 287.

A WIFE having quarrelled her consent *stante matrimonio* to a bond of 2000 merks granted to her husband's nephew, when the husband was on deathbed,

Answered; A wife might validly dispone her rights to a third party; and the husband being *in lecto*, she had a right to thirds.

Replied; Whatever might be said had she disponed *principaliter*, she here but consents. 2*do*, A wife has no right to thirds till after the dissolution of the marriage.

THE LORDS found, that the wife's consent was not a *non repugnantia*, but that she might quarrel her consent, and claim her whole share, although she granted this consent in contemplation of a disposition of the whole goods, which disposition the nephew renewed *re integra*.

Harcarse, (STANTE MATRIMONIO.) *No 870. p. 247.*

1682. *November.* FIN *against* FIN.

No 288.

THE LORDS inclined to find, that a wife subscribing consenter to a disposition of lands, whereof she had the liferent, and not judicially ratifying the same, might revoke, and that *metus reverentialis* was a sufficient ground of fear in wives who had a privilege; for positive *vis et metus* (which is a common reason of reduction to every person) could scarce be proved by wives, who may be privately put under the just impressions of it when no witnesses are present. And when wives judicially ratify, the Judge is so jealous that they are over-

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 dispone 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 infeftments, 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. 1. *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