*** Fountainhall reports the same case:

No 353.

FOUND, the maxim *non tenetur minor placitare* cannot be obtruded against reduction on this head, as *donatio inter virum et uxorem*; and that a wife's judicial ratifications is not valid, unless either subscribed by herself, or two notaries for her; yet see the 83d act Parl. 11, James III. which this decision corrects.

Fountainhall, MS.

1685. *December* 4. RICHARDSON *against* MICHIE and MARSHALL.

No 354.
A wife bound herself not to revoke her contract of marriage, without consent of a third party. She, however, afterwards renounced part of her jointure, and ratified the renunciation upon oath. After her husband's death, she revoked the renunciation, as being *donatio inter virum et uxorem*, and as unlawful to be taken by the husband. The Lords sustained the renunciation *ob religionem juramenti.*

THIS following point being reported by Balcasky, between Mr John Richardson, town-clerk of Edinburgh, and Michie and Marshall, was ordained to be heard in presence.—A wife, in a contract of marriage, is provided to a liferent, and a prohibitory clause is adjected, that it shall not be leisome nor lawful for her to discharge or renounce any clauses introduced in her favours, without the consent of a third party named; afterwards, at her husband's desire, she is moved to renounce a part of this jointure in favours of himself, and she ratifies it upon oath; this renunciation and oath is afterwards quarrelled and revoked by her, and her second husband; because contrary to the restriction imposed on her by the foresaid contract. *Answered*, 1*mo*, It is not conceived *irritanter et resolutive*, nor the deed declared null. 2*do*, Her oath validates it, and she cannot be reponed, by 83d act of Parl. 1481; and though the oaths of minors be discharged by the 19th Parl. 1681, yet that is only *vi illius statuti;* and the Parliament thought it not fit to extend it to the oaths given by wives.—If this had been a renunciation in favours of a third party purchasing *bona fide* for an onerous cause, much might be said to sustain it, notwithstanding the prohibitory clause; but being in favours of the husband, it is *contra pacta dotalia et fidem tabularum nuptialium*, and the renunciation being *contra legem contractus*, it annuls the deed; *quod contra legem fit ipso jure nullum est*, though it bear no irritant clause. See *Vinn. quæst. select. lib.* 1. *cap.* 1. And Stair, in his decisions, 18th February 1663, Birse and Bouglas, No 165. p. 5961., tells us, a wife swearing to a debt, her oath was declared null; and here it is also *in re illicita*, the husband knowing the interdiction on his wife.

On the 11th of December, being heard in presence, besides this point, they also debated another, viz. in the contract of marriage the father is obliged to take the whole conquest to the children of the marriage in fee; afterwards, he purchases a tenement, and takes it to his heirs; there being five children, the four younger say, they are creditors on the clause of conquest, and the heir can only have a fifth part, and that the father, by a gratuitous deed, (for this would not hinder the father to contract for onerous causes) could not prejudge his

No 354. bairn's right. *Answered*, He has given his younger children bonds of provision besides. *Replied*, It was done *in lecto*, and they were never accepted by them; and they fall short of what they may get by the clause of conquest in the contract.—THE LORDS, before answer, ordained some of their number to value the tenement, and to compare it with the bonds of provision, and see if there was any great disparity between the sums contained in the bonds of provision, and what they claim by the clause of conquest. Harcarse, and some of the Lords, stood much on the father's parental power, that though there was such a clause of conquest, yet parents may afterwards divide their estate among their children in what proportions they please, being the only best judges of their children's merits and deservings, and that this would be a check to their ingratitude.

Then, on the 22d December, the Lords advised the first point, and they would not repone the woman, but sustained the oath *ob religionem juramenti*, and because the other woman was a singular successor, and not bound to know the prohibitory clause, and the other had sworn never to revoke; and therefore they assoilzied from the reduction.

1686. *January* 1.—The Chancellor came to the house, and installed Sir George Lockhart as President of the Session, and administrated to him the oath of the test.

The cause that was first heard before the new President was betwixt Richardson, Michie, and Marshalls, mentioned 4th December 1685; and the Lords adhered to their former interlocutor; for the President declared, he would stand inviolably by the honour and authority of their decisions, and not alter what was done, but upon very weighty grounds; yea, in the causes where he had been an Advocate, he decided against his clients and informations, to show his impartiality. The grounds in this cause which moved the Lords, besides the President's ingenuous declaration, were, 1*mo*, That they were singular successors; and the conquest was only a personal obligement, which did not at all tie up the husband from disponing upon it; though it was *alleged*, That it being secured by infeftment, he could not alter it; 2*do*, The conquest was but *jus illiquidum*; and, in deducting so much of the conquest provided to the wife, and giving it to his children by bonds of provision, he did no more than what she would be compelled to have done by law; for, if she had liferented their whole means, they would have got an aliment from her by law, and so this bond of provision came but in place of that.

Fol. Dic. v. 1. *p.* 412. *Fountainhall, v.* 1. *p.* 382, & 388.