

1685. *January.*LADY BATHGATE *against* COCHRANE of Barbachlay.

No. 264.

A Lady judicially ratified an assignation to part of her jointure, but retained the assignation in her custody. She was not bound by the assignation notwithstanding the ratification.

The Lady Bathgate being infest upon her contract of marriage, in an yearly annual-rent of 2500 merks, having pursued a poinding of the ground, and there being compearance made for ——— Cochrane of Barbachlay; it was alleged for him, that the Lady did dispone 1300 merks of the said annual-rent in favour of Muirhead of Braidysholm, and did ratify the disposition judicially; and it is offered to be proved by Braidysholm's oath, that the disposition was to the behoof of the Lady's husband, and so was a renunciation and extinction of the annual-rent *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 allege that the disposition was not delivered, seeing she did ratify the same judicially, which is sufficient to prove the delivery; and she cannot revoke the disposition, she having judicially ratified the same upon oath.

Duplied, That it was ordinary for women to ratify dispositions judicially, and yet retain the disposition and ratifications in their own hands until affairs were finally ended, so that the judicial ratification cannot infer the delivery of the disposition; as also the judicial ratification cannot be rejected, seeing it is not subscribed by the pursuer but only by the clerk, and it was not done before the Judge-competent, being done by the Sheriff of Edinburgh within the precincts of the Abbey, which is *extra territorium*. Triplied, That the judicial ratification of a right must infer the delivery as well as the registration or intimation thereof, and the ratification ought to be sustained, albeit the pursuer be not subscribing; because it is offered to be proved by her oath, That she compeared judicially, and ratified the disposition and judicial ratification, which being *actus voluntariæ jurisdictionis*, may be done and expedie before any Judge having jurisdiction, albeit *extra territorium*, seeing it is not necessary it should be done *pro tribunali*; but in any private house, whether it be within or *extra territorium*. The Lords found the allegiance of not-delivery of the disposition relevant, seeing it was still in the Lady's own hand, and that it was not elided by the judicial ratification.

Sir P. Home MS. v. 2. No. 686.

1706. *January 1.* TROTTER *against* PITCAIRN and His LADY.

No. 265.

A woman after making her testament, executed an assignation of

Jean Ramsay, relict of Sir Patrick Brown of Coalston, in her testament, by way of missive letter, nominates the Lady Pitcairn, her niece, her sole executor and universal legatar; but some months after this testament, she assigns a bond of 1,000 merks, owing to her by Mr. Watt of Rosehill to the Lady Idington, her