

No 83.

*a pari*, the husband from that contract is reckoned husband, and donations granted by him are revocable; besides, that this bond is false, and under improbation, as being made up long after the contract of marriage, to sustain the wife's infestment, not only for what is provided in her contract, but for the whole conquest.

THE LORDS found, that a wife's consent to a minute of a contract of marriage of the daughter, she not being consenter in the principal contract, did only import her consent to the marriage, and not to the disposing the estate, without reservation of her liferent. They found also, that the infestment taken originally to the husband and wife, during the marriage, though it did not mention to be in implement of the bond, or any other cause, yet that it was in effect the implement, and not a donation; but superseded to give answer to that point, whether the bond being after the contract and before the marriage, were revocable, as a donation between man and wife, or were null as *contra bonos mores*, till the improbation of that bond were discussed.

*Fol. Dic. v. 1. p. 439. Stair, v. 2. p. 666.*

1687. July 9.

A. against B.

No 84.

THE LORDS found, that a wife's consenting to her husband's testament, wherein he leaves sundry legacies, does not preclude nor debar her third part of the moveables, because the legacies do not affect her share, but only the dead's part, and so they are not *super eodem subjecto*.

*Fol. Dic. v. 1. p. 438. Fountainball, v. 1. p. 465.*

1739. July 14. and December 11.

BUCHAN against Sir WILLIAM COCKBURN.

No 85.

Consent of a proprietor to a disposition, implies a conveyance of all right in the consenter's person, but the consent of a creditor implies only a *non repugnantia*.

THE COURT was unanimous, that the consent of a proprietor to a disposition *a non domino*, implies a conveyance of the property, as what can have no other intention or meaning; but found, that a consent by a creditor only, implies no more than a *non repugnantia*, as what could only be the intention of it. Notwithstanding it was observed, that Lord Stair, in several places, says, That consent is the same thing as if the consenter were resigner; and if consent imports a conveyance in its own nature, which was admitted when by the proprietor, so a consent of a creditor should in its own nature import a conveyance of such right as was in him; just as a disposition of the property, when *a non domino*, will imply a conveyance of every lesser right that may be in him, as of a tack or annualrent; and upon which ground the LORDS, by their first interlocutor in this case, had found, That Sir William Cockburn the creditor's consenting to the disposition by Langtoun, the proprietor, to Mr George Buchan, im-