

1724. July 21.

ELIZABETH BORTHWICK, widow of Thomas Scot, *against* JOHN SCOT, son to the said Thomas.

THE pursuer, with consent of Thomas Scot her husband, granted a disposition of certain tenements in Edinburgh which belonged to her, in favours of Pringle of Torsonce, brother-in-law to the husband, who thereupon disposed the same to the said Thomas Scot. She having survived her husband, raised reduction of these two dispositions, as being in the same case as if she had disposed the tenements directly to her husband, which she could have revoked, as a donation *inter virum et uxorem*.

The defences were, *imo*, That she had judicially ratified the disposition *extra presentiam mariti*, and sworn, 'that she should never quarrel, impugn, nor reduce the same, nor come in the contrary thereof, directly or indirectly, in judgment, nor without the same, any manner of way, in time coming;' and this, according to Sir James Stewart's opinion, in his Answers to Dirleton's Doubts, tit. *Don. inter vir. et ux.* excludes revocation. *2do*, That she had homologated the disposition, in so far as, a liferent of the subjects being reserved to her, she had, after her husband's death, uplifted and discharged the rents, and set tacks, &c. as liferentrix.

Answered to the *1st*, That the judicial ratification does only exclude a reduction *ex capite vis et metus*, but does not hinder a wife to revoke a donation made by her to her husband *stante matrimonio*, as was found February 15. 1678, Gordon against Maxwell, No 353. p. 6144.; which authority must be of greater weight than the opinion of any private lawyer. To the *2d*, That her uplifting rents, to which she was entitled, could not be construed an homologation of the disposition; for, till that deed was reduced, she could do no more than levy the rents as liferentrix.

THE LORDS found, that the judicial ratification did not exclude the revocation; and that the setting tacks as liferentrix was not a sufficient homologation of the dispositions.

Reporter, Lord Grange.

A.G. Arch. Hamilton, sen.
Clerk, Mackenzie.

Alt. Ch. Binning.

Fol. Dic. v. 3. p. 288. Edgar, p. 97.

1793. December 4.

ANDREW BULLIONS *against* JAMES BAYNE and JOHN HEPBURN.

JOHN GUERNSEY, a soldier, husband of Margaret Bullions, went with his regiment upon foreign service.

No 355.

A wife, with consent of her husband, disposed certain houses to her brother-in-law, who redispensed them to her husband.

She afterwards raised a reduction of the disposition, on the ground, that it was *donatio inter virum et uxorem*.

Answered, She had ratified it *extra presentiam mariti*, and had homologated it by letting tacks as liferentrix (the liferent being reserved to her.)

The Lords repelled the defence.

No 356.

A deed executed by a married wo-