

judicial, and not upon oath, the debate was delayed, and the matter ended in a transaction. No 289.

*Harcarse, (STANTE MATRIMONIO.) No 877. p. 248.*

\* \* \* See Fountainhall's report of this case No 102. p. 987.

1685. December. The LADY BATHGATE *against* COCHRAN of BARBACHLAW.

No 062.

THE Lady Bathgate pursuing a poinding of the ground for her jointure, it was *alleged* for the other creditors, That she had disposed a part of her jointure to Bredisholm for her husband's behoof, which must operate a renunciation.

Judicial ratification does necessarily import that the deed ratified had been delivered.

*Answered* for the pursuer; Though she signed such a disposition, it was never delivered, but is still in her own hand. And, *2do*, Though it had been delivered, it was revocable, as *donatio inter virum et uxorem*.

*Replied*; The pursuer having appeared before a judge, and ratified the disposition, promising upon oath never to come in the contrary; that was equivalent to a delivery, and she cannot revoke in respect of the oath.

*Duplied*; The ratification being a part of the conveyance for making it sure, may be, and usually is done before delivery; and so cannot import delivery. *2do*, The ratification is not sufficient, it not being subscribed by the wife, but only by a judge, and such a one too as had no jurisdiction in the place where it was done, viz. a sheriff-depute within the abbey.

*Triplied*; Oftentimes the wife doth not subscribe the ratification, but only the judge, even when he is not *pro tribunali*. And the wife swearing she was not compelled, clears that she was under no impressions of fear.

THE LORDS found the ratification did not import delivery; but did not proceed to the other points.

*Harcarse, (STANTE MATRIMONIO.) No 880. p. 249.*

\* \* \* Sir Patrick Home reports the same case:

1685. January.—THE Lady Bathgate being infeft upon her contract of marriage in an yearly annualrent of 2500 merks, having pursued a poinding of the ground, and there being compearance made for — Cochran of Barbachlaw, it was *alleged* for him, That the Lady did dispose 1300 merks of the said annualrent in favour of Muirhead of Bredisholm, and did ratify the disposition judicially; and it is offered to be proved by Bredisholm's oath, that the disposition was to the behoof of her Ladyship's husband, and so was a remuneration and extinction of the annualrent *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

No 290.

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 ratification 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 respected, seeing it is not subscribed by the principal, but only by the clerk; and it was not done before the judge competent, being done by the Sheriff of Edinburgh, within the precinct 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 principal be not subscribing; because it is offered to be proved by her oath, that she compeared judicially, and ratified the disposition; and judicial ratification being *actus voluntariæ jurisdictionis*, may be done and expedite 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 delivering the disposition relevant, seeing it was still in the Lady's own hands, and that it was not elided by the judicial ratification.

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

No 291.

1686. *December.*     ANDREW LASSELS *against* MARGARET RICHARDSON.

A WIFE having, *stante matrimonio*, wadset lands she was heiress of, for a sum that was *in rem versum* of the heritage, the LORDS found her not liable personally to pay, but that the land was liable, though she had not judicially ratified the deed.

*Harcarse, (STANTE MATRIMONIO.) No 884. p. 252.*

No 292.

1704. *January 11.*     } GORDON *against* CAMPBELL.

THE wife's debts, though just and lawful, can induce no execution against her person, while *vestita viro*.

*Fol. Dic. v. 1. p. 408. Fountainhall.*

\*.\* See this case No 24. p. 5787.