

tion could prove against a third party ;—which the Lords thought it could not. But it stuck with severals, that this assignation, though *in rigore juris* null, being signed by a wife *vestita viro*, without his consent, was supplied in that defect by the posterior contract, and was confirmed by the husband's dying without ever quarrelling it ; and that there was none competing who derived a right either from the wife or husband, or their heirs ; and it was *jus tertii* to others. Yet the Lords, by a plurality, found this production did not satisfy the terms of the act, and points admitted thereto by the interlocutor ; and therefore assoilied. See Dury, 14th March 1634, *Gib* ; where a voluntary contract between a man and his wife is sustained where there was no separation by a sentence.

*Vol. I. Page 643.*

---

1694. November 16. ROBERT WILSON and His CURATORS *against* His WIFE.

ROBERT Wilson and his curators having raised a reduction of a disposition granted to his wife, upon the reason of deathbed : when the probation came to be advised, the Lords found it clearly proven, that, at his going to kirk and market, he fainted by the way, and was supported. But it was not cleared, when his sickness began, and if he had contracted it before subscribing that disposition ; which was absolutely necessary : for, if a right be granted by one in health, though he die within an hour after, without going either to kirk or market, it would be valid. Therefore, the Lords assoilied from the reduction. Whereupon a bill was given in by the pursuer, representing, that, through mistake, the witnesses had not deponed upon the time when he took the disease, and had not answered that interrogatory ; whereas, if the Lords would allow them yet to be reëxamined, they would clear that point above exception.

The Lords thought that of dangerous consequence, to begin a new probation, when you had the power and management of it in your own hand ; therefore, they refused any farther diligence, the cause being now advised, and found not proven. For an act of litiscontestation is a judicial contract and novation, on which both parties put the whole cause ; and, if these points be not proven, then, of consent, he engages to lose the cause. Yet sometimes the Lords, for their own clearing, will admit probation in this state of the process, if it can be shortly expedite, and draw not out the cause to any length. *Vol. I. Page 643.*

---

1694. November 14 and 20. FRENCH of FRENCHLAND *against* The EARL of ANNANDALE and SIR CHARLES MAITLAND of PITRICHY.

November 14.—PHESDO reported the bill of suspension given in by French of Frenchland against the Earl of Annandale, and Sir Charles Maitland of Pitrichy, as assignee, by the minister of Moffat, to the vicarage-teinds thereof. The reasons were, *1mo*. That the advocates, who took a day for producing them to depone, had no warrant, and were not employed, but appeared officiously.

This the Lords repelled, else it would cast all the decreets *in foro*.

*2do*. That the term was circumduced against them, under trust, when my