

or be expressly given in Place of a Taker, 22 November 1669. Mc Gill contra Ruthven of Gairn. 22 January 1673 Watson contra Bruce 25 July 1710 Chalmers contra Creditors of Lyon where there was no anterior Contract; or unless the Husband hath given her the equivalent. The Reason of this Difference betwixt the Donation of a Man to his Wife, and the like granted by a Wife to her Husband, is because a Husband is obliged, <sup>propter</sup> to provide for his Wife, and not the Wife for her Husband.

But if a Man or Wife disposes in free Gift principally to a third Party, a judicial Ratification will render the Deed effectual, tho the Husband or Wife hath some consequential Advantage thereby. v. g. when a Man pressed with Debt to sell his Land, gets his Wife to renounce her Jointure affecting the same, and ratifies the Renunciation upon Oath judicially 28 June 1673 Arnold contra Scot and Frier. A Man having granted to his Wife a Bond, obliging him to pay her and her former Husband's Debts; the Obligation so conceived in Favour of third Persons, was found effectual to furnish Action to any of these Creditors against the Husband Spotswood pratt. lit. Husband and Wife. A Donation by a Man in Favour of his Wife's Children of a former Marriage 15 January 1669 Hamilton contra Cairns or by a Wife in Favour of her Husband's Children 12 July 1671 Murray contra Murray are irrevocable; tho done at the earnest Desire of the Children's Parents.

A judicial Ratification is performed thus. The Wife appears in Absence of her Husband before any Magistrate, whether sitting as Judge in publick Court, or privately where he holds Court for that Effect, and there swears, that her Husband neither induced her by Force or Fear to the granting of what she then ratifies; but that she did the same out of her free Will, foreseeing thereby her own good and Advantage and shall never quarrel it either upon the Head of Force, or by the Privilege of Revocation which last Words by the Privilege of Revocation are necessary to be added: because judicial Ratification of Deeds done by a Wife, being required in Law to secure her against Force, both otherwise hinder her to quarrell the Deed only ex capite vis et metus, and not upon other Grounds of Law as being donatio inter virum et uxorem 15 February 1670 Maxwell contra Gordon as she may, notwithstanding libels of reduce it upon the Head of Circumvention, or Minority and Leshon Dirlet Doubt's lit. donat. int. vir et uxor. The Statute (act. 24. Par. ii. §. 3.) sustains a judicial Instrument under the Seal of the Judge, as a sufficient Instruction of a judicial Ratification. Because then one Notary's Subscription for a Party that could not write was sufficient. But now when two Notarys behove to subscribe for one that cannot write, a judicial Ratification is

is not instructed by an Act of Court, which is but the Assertion of a Clerk unless the Party herself subscribe it. January 1655 Bell contra L. Now 15 Feb. 1670 Gordon contra Maxwell. M. Henzie Observ. on act. 24. Par. ii. §. 3. A judicial Ratification by a Lady of a Disposition made by her to one for her Husband's behoof, was not sustained to infer that the Disposition was a delivered Evident, the same being then in the Hands of the Lady and produced by her. 2 December 1605 Lady Bathgate contra Cochran of Carbachy. Because it is ordinary for Wives to ratifie Dispositions before the Judge Ordinary, and yet to retain both Disposition and Ratification in their own Hands, untill Affairs be concluded. Sir James Stewart (answers to Dirlet. Doubt's tit. donat. int. vir et uxor) says, that if a Wife consent to a Right granted by her Husband of her conjunctive Lands, and ratifie the same; she cannot crave the equivalent from her Husband's Representatives, her consent being construed in Favour of the Purchaser and not understood a Gift to the Husband. But I do not see how this can hold in Law. For tho a Right made by a Wife to a third Party, whereby her Husband hath some consequential Advantage, will being judicially ratified, stand good to that third Party, yet she is not tied up by the Ratification, from recalling any Profit the Husband reaped by the Deed; as to which it was donatio inter virum et uxorera 28 June 1673 Arnold contra Scot and Frier. So that nothing seems to hinder her to pursue the Husband and his Executors to provide her to the equivalent of what she renounced. And if it were otherwise, the Privilege of revoking would be of no Use: seeing the Husband could always influence the Wife to swear, that she shall not revoke.

A Tack set by a third Person to a Man and his Wife in Liferent, not bearing to have been acquired by the Man's Means, was found not revocable, as to his Wife 30 January 1639 Lady Craigmillier contra Chalmers. For that the Tack flowed from the Letter to the Man and Wife, and the inserting her Name as Liferenter after his Death, did not make him poorer. Albeit Donations betwixt Man and Wife after Marriage are revocable, such a Gift before the Marriage, tho after the Contract, is not revocable 23 January 1600 Jume contra James. Because there is little Hazard of mutual Donations before Marriage, which might easily be procured after Consummation, not only thro' mutual Love, but even to keep Peace at home. But where a Donation by a Man to his Wife bore Date, before the Marriage; it was sustained relevant for the Husband's Heir to prove, that the Deed was antedated, and truly made after the Marriage 24 July 1677 E. Dunfermling contra E. Callender.

A Gift betwixt Man and Wife is not null, for it is confirmed by the Grantor's Death, and cannot be revoked by his Heir l. 13. §. 1. l. 32. §. 2. ff. de donat. int. vir et uxor. l. 25. C. 20. But if the Donee die before the Donor, the Gift is void and returns to the Donor l. 8. ff. de reb. dub. l. 6. C. de don. int. vir et uxor. So that if