

also supported by older Decisions in other Cases as 19 Decemb. 1626. Matthew  
 contra Sibbald 24 March 1626 Greenlaw contra Galloway. In which last case  
 a Bond granted by a Man and his Wife containing an Obligation to pay a prin-  
 cipal Sum, and in Default thereof, to pay Annulment for the same out of their  
 Lands generally, as well not in feft as in feft, but no Clause to in feft in the Wife's  
 Lands; was found neither obligatory against the Wife's Person, nor against her  
 Lands, for Principal, or Annulment, and reduced together with a comprising  
 law thereon. Dispositions and real Rights, or Reservations thereof, made by  
 Wives with Consent of their Husbands, are regulariter valid unless they be quib-  
 ralles super vi et metum; which is a legal Ground to quarrel Deeds of Men as well  
 as Women. But because a lesser Kind of Force and Fear is sustained relevant again  
 the Deeds of Women than of Men; to avoid all Question, Wives granting herelate  
 Rights, or renouncing their jointures, are usually required to ratifie such Deeds  
 judicially upon Oath. Which judicial Ratification sufficeth to confirm the Deed  
 Act. 24. For. ii. J. 3. 8 July 1672. Grant contra Balvaird 28 July 1673. Arnot  
 contra Scot and Fraser. Tho' as has been said, it would not serve to support a Wife's  
 Bond or personal Obligation for Debt. The Reason of the Disparity is, because  
 Ratifications cannot maintain a Right ipso jure null; but only exclude Defen-  
 ces competent against valid Rights. The ratio rationis, or Reason why Law doth  
 quite annull a Wife's personal Bond for Sums of Money, and not her Renun-  
 ciation of jointure are 1<sup>o</sup> For that in conjunct Fees the Wife is domina and the  
 Deed takes no Effect till after Dissolution of the Marriage; whereas she cannot  
 bind herself personally, while she is sub potestate viri. 2<sup>o</sup> A Wife is more  
 easily induced to bind herself than to dispoise and give away her Estate. 3<sup>o</sup> She  
 dispoises and gives only what she hath; but she may bind for much more than  
 she hath in infinitum. But the Want of a judicial Ratification, was not sustaine  
 as a Reason of Reduction of a Wife's Consent to a Disposition granted by her Hus-  
 band of a Subject hereditary by her, since neither Force nor just Fear were preten-  
 ded in the Case. 28 June 1706. Gray contra Cumming of Birnesh. A Wife's Con-  
 sent to an Infeftment of Annulment granted by her Husband out of Lands left  
 created by her, was sustained, tho' not ratified judicially, no Force or Threats having  
 been used to make her consent: because a judicial Ratification is not necessary,  
 but practised only ad maiorem cautelam 27 January 1691. Stewart contra Skel-  
 cheson. As a Wife's Obligation relating to a Disposition of her Lands or other her-  
 editable Rights, would be good: so probably upon such an Obligation her Escheat  
 might fall. But as was before observed, if a Wife's Deed be null v. g. for want of  
 the legal Solemnities, her Husband's authorizing her by his Consent, cannot sup-  
 port it 29 Decemb. 1709. Anderson contra Coch 3<sup>o</sup> A Wife's Bond or personal  
 Obligation, with in some Cases bind her Husband, from his tacit and presumed  
 Consent: tho' she cannot personally bind or oblige herself, even with his express  
 Consent and Authority. Thus a Wife's Bond for Money furnished towards her  
 necessary Nymment, doth oblige her Husband 21 Decemb. 1629. Saloun contra  
 Lady Halbertoun. But a Wife's Bond for Money advanced to her by her  
 Friends

The consent of the husband in this case is not necessary to support the wife's obligation.

Friends (after her Husband's Refusal when instrumented to do it) for defray-  
 -ing the Charges of her journey to the Bath in England advised by Physicians  
 as necessary for her Health; was found null, and Action sustained against the  
 Husband for Prepayment of the Sum advanced only in so far as it was necessary  
 19 July 1711 Lady Kimfawns and others contra L. Kimfawns. Again the Deeds  
 or Bill of a Wife appointed Factor or set over any Commerce by her Husband  
 for goods she buys, will affect her Husband with whose Consent she carries on  
 such Trade; but not oblige or affect herself 29 January, 1631. Porter contra  
 Law, no not in subsidium, if the Husband should prove insolvent. Decree since  
 bound eius institutio nomine. But a good Duke Lamyre (3. best comment. ad Tit. 11. in Jus hoc. n. 36) says  
 opinion of Domat (Les Loix Civiles etc. Tom. 1. part. 1. Liv. prelim. Tit. 2. Sect. 1. Art. 17) says that by  
 the custom of France, a wife who is a publick Merchant, and trades a Trade separate from that  
 of her Husband, may oblige her self without his express Authority.  
 A Gentleman's Wife's being in Use to receive his Rents and Annulments  
 without a Warrant in Write, was not found to infer that she was preposita negotiis,  
 or had Right to uplift a principal Sum belonging to her Husband. Nor was  
 her Oath sustained to prove Payment after the Husband's Death 3 June 1680  
 Buchanan contra Nairn. Albeit a Vintner or Shop-keeper's Wife's being ac-  
 -customed to receive the Husband's Money, might without any written  
 Commission infer, that she was preposita tali negotio because written Com-  
 -missions use not to be given to such Wives. Where a Woman keeps Shop and  
 traffiques as a Merchant, with the Knowledge of her Husband, he is lia-  
 -ble for Debts contracted by her upon the Account of her Traffique adione  
 institutio, 17 December 1675. Wilson contra Jeans observed by Dirlston. A  
 Woman is understood to be preposita negotijs domesticis, so that for Provision  
 of her House she may take from Glashers Baxters and others such furnish-  
 -ing as is necessary; as to which her Declaration upon Oath may be taken,  
 and ought to be trusted. For the Husband is presumed not to know the  
 particular Quantities; and those who do furnish her are not obliged to in-  
 -quire, whether her Husband has given her Money sufficient to provide his  
 House, if she be a Person that is not inhibited; seeing the Husband if he  
 suspect she may abuse and wrong him, has a Remedy by inhibiting her  
 27 Decemb. 1675. Dalling contra Mc henzie observed by Dirlston. A Wife  
 who in her Husband's Absence delivered to his Creditors certain goods  
 belonging to her Husband, in Satisfaction of the Debt, having got up the Instructions  
 with a Discharge thereof; and the Husband having after his Return retained the  
 Writs, without ever seeking back the Goods or reclaiming against what she  
 had done, the Property thereof was found effectually transferred to the  
 Receiver; so as they could not be affected by another Creditor's Diligence  
 26 Decemb. 1711 Brown contra Dickson in Respect the Husband's Silence  
 and retaining the Writs delivered to his Wife, necessarily imported Rati-  
 -fication and Acquiescence in what she did.