

sition, that could not have been daunted by him in a tavern, where she might be supposed less subject to impression than *intra privatos parietes*; especially considering that her husband was immediately going to another world, and so she had no reason to fear his future resentment of her standing out. Nor is it of any moment that she did not subscribe frankly; seeing not a wife of an hundred will part with her heritage, without some reluctance, or appearance of grief. 2. By the civil law, which is liberal in granting privileges to wives, *judicium uxoris postremum in se provocare maritali sermone, non est criminisum. L. 3. c. Si quis aliquem testari prohib. vel coeg.* And marital reverence is no ground of restitution, *nisi fines excedat minis gravioribus, et uxorem adegisse probare possit. Voet, Comment. in Pandect. tit. Quod metus causa, N. 11.* And if it were otherwise, appearance of reluctance would annul the marriages of young daughters; and all bargains with persons in power, which are judged by the like rules observed betwixt man and wife. Again, marital reverence is not sufficient, though he were *vir ferox*, and divorced thereafter. *Stair, Instit. Lib. 1. Tit. 9. N. 8.* In short, though what is done directly in favours of the husband be retrievable, a third party or purchaser is secure, unless plain force be proved; *June 28, 1671. Arnot against Scot; July 12, 1671, Murray against Murray.*

ANSWERED for the pursuer,—1. The husband's frowning, seeming angry, and tucking her clothes, because she seemed averse from subscribing the disposition; and keeping her several hours in a tavern, till he got her persuaded to consent to his rendering her miserable, by allowing him, when he was to leave her, to dispo-
 ne all she had in the world; are circumstances far from arguing that he was mild, or she of a virago temper. 2. Though *reverentia maritalis per se*, were not sufficient to reduce this deed, law requires not such a force to reduce a wife's deed in favours of her husband, as one for the behoof of strangers allennarly. Therefore, honest purchasers are careful to take the husband obliged to cause his wife judicially ratify the deed, by swearing out of his presence before a judge, that she willingly and freely consents, without fear or compulsion: and though this judicial ratification be not absolutely necessary to the validity of such a deed, it is a presumption of a wife's being generally under restraint by her husband; and the least qualification of force concurring with *reverentia maritalis*, is sufficient to reduce a wife's deed for the behoof of her husband. *January 9, 1623, Marshal against Marshal.*

The Lords sustained the disposition, and assoilyed the defenders from the pursuer's reduction. For they thought it dangerous to overturn a disposition upon such a ground, after twenty-four years silent acquiescence by the pursuer.

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1708. *July 2.* WILLIAM SOUPER, Merchant in Aberdeen, *against* GEORGE PIPER and JAMES MILN of Balwylo.

IN a competition betwixt William Souper and James Miln, about the right of some merchant goods belonging to William Pennie, their common debtor, consign-

ed in the hands of George Piper by way of commission, in order to be sold at Coningsberg, and the product to be returned in other goods from thence. William Souper claimed to be preferred upon this ground, that the principal commission accepted by Mr. Piper was indorsed and delivered up to him, and ought to prefer him to any separate right made of the goods therein contained, though first intimated; because, his right needed not to be intimated, more than the indorsation of a bill of exchange; and, in transactions among merchants, no assignation to an accepted commission or bill, without delivery of the principal commission or bill, is valid, or can warrant the acceptor to pay.

ANSWERED for Balwylo,—He is clearly preferable, by having both intimated an assignation to the goods, and arrested them in Piper's hands, before intimation of Souper's right. For where was it ever heard that privileges allowed by law to bills of exchange, are communicable to other merchant-conveyances? and to say that an assignation to merchant goods could be completed without a formal intimation, or that such an assignation could not be made without delivering up the principal commission, is *sine lege loqui*.

The Lords preferred James Miln of Balwylo.

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1708. July 16.

[ANENT the POOR'S ROLL.]

The Lords refused a gratis warrant; in respect the report of the Advocates for the poor bore not that the petitioner had *probabilem litigandi causam*, but only that he deserved the benefit of the poor's roll.

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1708. July 16. WALTER WILLIAMSON of Cardrona *against* THOMAS THOMSON, Writer in Edinburgh.

THOMAS WILLIAMSON, as apparent heir to Thomas Williamson, merchant in Peebles, having disposed some tenements of land there to Thomas Thomson, without a procuratory to serve him heir to his predecessor; and, thereafter, disposed the same to the deceased William Williamson, sheriff-clerk in that town, with a procuratory to serve him heir: Thomas Thomson applied to, and required John Frier, bailie in Peebles, to cognosce Thomas Williamson, his author, heir to his predecessor; and, thereafter, to infest himself upon Thomas Williamson's disposition: which the bailie refusing to do, Thomas Thomson protested against him for cost, skaith, and damage, and took instruments, *September 26, 1707*. Thereafter, Mr. Walter Williamson of Cardrona, son to the deceased William Williamson, was infest in the lands aforesaid, as heir to him, after cognoscing Thomas Williamson heir to his predecessor; and raised a declarator of his own right, with a reduction of the disposition to Thomas Thomson.

ANSWERED for Thomas Thomson,—Albeit Cardrona was first infest in the subject under debate, yet his instrument against the bailie being prior to Cardrona's