

bal agreements : consequently ought to be effectual to make the granter liable for the pursuer's damage sustained through not performance of the minute ; especially considering that he was ready to have performed his part.

The Lords found the declaration obligatory upon the defender to make up the pursuer's damage, through the not implement of the terms of the agreement prestable by Moristoun.

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1708. *June 30.* JOHN LIN, Chamberlain to the EARL of LEVEN, Supplicant.

JOHN LIN, factor appointed by the Lords upon the estate of Rankeillor, having represented by bill, that the roof of the mansion-house was ruinous and ready to fall ; which, if not repaired, would be a great prejudice, both to the creditors and common debtor, in case the lands were afterwards exposed to sale ; and that he had procured a declaration from skilful workmen, that had inspected the house, that it would cost L.333, 6s. 8d. Scots to keep up the roof : and craved their Lordships' warrant to him for employing workmen to make such reparations ; or else that they would declare him free of any culpable neglect, for suffering the house to decay and go to ruin :—

The Lords refused to interpose their authority, or to give any answer to the petition.

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1708. *July 1.* KATHARINE JOHNSTON, Relict of JOHN MONTGOMERY of Cri-voek, *against* the Representatives of PROVOST NAPIER.

JOHN MONTGOMERY having agreed to sell two shops in Glasgow to Provost Napier, wherein Katharine Johnston, the disponer's wife, stood infeft ; he brought her to a tavern upon a Saturday, at five o'clock in the afternoon, in order to get her consent. She, in respect her husband was to leave her and go to America upon the Monday following, expressed a reluctancy and unwillingness to sign the disposition : but, after some hours, she was prevailed with to do it, upon promise of one thousand merks laid upon the table ; which was immediately taken back again. Katharine Johnston twenty-four years thereafter, when her husband was dead, and herself married to a second, raised reduction of the foresaid disposition, against the representatives of Provost Napier, upon this ground,—that the disposition aforesaid was extorted from her by the frownings and other undue importunities of her first husband, without being read to her at signing, and she got not the one thousand merks promised her for her consent.

ALLEGED for the defenders,—The reason of reduction is not relevant. For I. Provost Napier was a person who abhorred an unfair purchase ; Mr. Montgomery, a mild gentleman ; and Katharine Johnston his wife, of a masculine dispo-

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-