

No 384.

man and wife, resolving in a fee to the man, and a liferent to the wife, seeing these gifts were given after the marriage, and for the use of a family, they were not thereby in the wife's possession, though in her custody, but in the man's possession, who thereby became proprietor, and by the dissolution of the marriage, these gifts continued with him as proprietor thereof; at least the gifts being bestowed after the marriage, ought to divide equally betwixt the man and the wife, because they were then in a conjugal society, and the gifts must be presumed given to them as in that society; so that by the dissolution of the conjugal society, the husband and wife had equal share; for the dissolution of the marriage doth restore either party to what was theirs before the marriage; but as to what was gifted to them during the marriage, it was possessed by them *in communione bonorum*, as all their moveables would have been, if the marriage had continued year and day; and therefore, by the dissolution of the conjugal society, though within year and day, what was gifted during the marriage, without expressing on whose account, must be understood to be gifted to both the spouses, and to divide equally by the dissolution of the marriage.

THE LORDS found, that these gifts did equally divide betwixt man and wife, unless they were *jocalia* proper for the wife, being gifted after the marriage, and delivered to the wife, without expressing on whose account.

Fol. Dic. v. 1. p. 414. Stair, v. 2. p. 670.

No 385.

In an action for repetition of tocher, the wife having died within the year, the Lords allowed the husband to deduct debts due by the defunct before the marriage, and paid by him; but refused deduction of aliment and other expenses bestowed during the marriage.

1681. February 23.

GORDON against INGLIS.

A REPETITION of a tocher, because the marriage dissolved within year and day without bairns. The husband craved deduction of her marriage clothes and feast, and for her entertainment during the standing of the marriage, and the expenses of her funerals, seeing it was usual for women and their friends to furnish their own marriage clothes and feast, and the rest would have affected her though she had died without marriage, and why should he be a loser. THE LORDS refused to deduct any expenses, except for the bridal clothes, the price whereof was a debt preceding the marriage, and for the funeral charges.

Fol. Dic. v. 1. p. 414. Fountainball, MS.

* * See Stair's report of this case, No 126. p. 5924.

1710. November 14.

ROBERT DEWAR, eldest SON to GEORGE DEWAR, Wright in Edinburgh,
against MARGARET WRIGHT, his Father's Relict.

No 386.

IN a process at the instance of Robert Dewar, against Margaret Wright, his father's relict, the LORDS refused to ordain her to restore to the pursuer a silver