

emblem of the siege of Breda, valued at L. 10 Sterling, not to be *inter jocalia*, but to belong to the husband's executors. And I remembered the Lords of the Dutchess of Lauderdale's process against the Lady Boighall,* as executrix to Lauderdale's first Lady, who died at Paris, that the Lords had much restricted these paraphernalia; and cited Julius Clarus, and other Italian lawyers; because of wives easy access and great influence they might have on their husbands, to convert great sums of money into such trifles and bagatelles, to the evident prejudice and diminution of his fortune; and therefore she must prove they were gifted. *Answered* for the Countess Dowager, That the present Earl had not the least pretence to retain her jointure on this frivolous account; for it was of known notoriety that men of far less quality than the Earl of Bute gave purses of gold of more value than this to their wives, and were never reckoned to belong to the husband, or fall under his *jus mariti*; yea, not so much as to be affectable by his creditors, who certainly might have a better claim than the heir; and Ulpian, l. 32. § 2. *De donat. inter vir. et ux.* expresses it very generously, 'Fas est, eum quidem qui donavit pœnitere, hæredem vero id eripere forsitan contra supremam voluntatem ejus qui donaverit, durum et avarum est.' If a creditor were evicting it, his case might be favourable, gratuitous donations not being so easily sustained against them; but where the question is only with the heir of the donor, a person of quality, and the gift very disproportioned, never revoked, it is invidious, and so *morte confirmatur*.—THE LORDS, by plurality, found my Lady had right to the said purse, and that it did not belong to the husband, nor his heir; but as to the second part of the oath about the L. 40 Sterling of presents, seeing it was acknowledged they used to be applied to the use of the family, the Lords found it in a quite different case from the former, and that it belonged to the husband; and sustained the compensation *quoad* that, the quality of the oath being extrinsic.

Fol. Dic. v. 1. p. 389. Fountainhall, v. 2. p. 744.

1716. July 31. JEAN PITCAIRN and her Husband *against* JOHN PEUTHERER.

IN a process betwixt these parties, this question having fallen to be considered, viz. whether a chest of drawers, wherein a wife kept her clothes, was a part of the *paraphernalia*, and did thereby become the wife's property, exclusive of the husband's *jus mariti*?

And it was *contended* for Pitcairn the pursuer; That it was to be reckoned among the *paraphernalia*, because these do not only include clothes, but those things that are proper for their custody; thus Paulus, lib. sent. 3. cap. 6. 'Mundo muliebri legato ea cedunt, per quæ mundior mulier lautiorque efficitur; velut speculum, conchæ, situli, item pixides, unguenta, et vasa in quibus ea sunt;' which directly determines the case, that is, whatever is necessary for keeping the things also is understood to pass with them; and it is very sure that chests of drawers are absolutely necessary for custody of clothes *ad munditiam*.

No 48.

Found, that a chest of drawers, appropriated for keeping a wife's clothes, is a part of the *paraphernalia*.

* Examine General List of Names.

No 48.

Answered for the defender ; That, at this way of arguing, the *paraphernalia* may be made very large ; and if wives be allowed to make moveables their own by laying clothes within drawers, cabinets, and chests, &c. a good part of the moveables of the husbands will in progress of time be made *paraphernalia*.

THE LORDS found, that a chest of drawers, appropriated for keeping a wife's clothes, is a part of the *paraphernalia*.

Act. *Bosewall.*Alt. *Hay.*Clerk, *Gibson.**Bruce, v. 2. No 34. p. 45.*

S E C T. IX.

Effect of *Jus Mariti*.

No 49.

By payment to the husband of a sum destined for ornaments to the wife, any claim by her executors is excluded.

1667. February 2. EXECUTORS of Lady PILTON *against* HAY of Balhousie.

MR FRANCIS HAY granted a bond to his wife's sister, the Lady Pilton, bearing, that for good considerations he obliged him to pay her 1000 merks yearly during her life, with this provision, that it should be leisome to her to employ the same for the abuliaments and ornaments of her body, or any other use she pleased ; and without any right and interest in her husband thereto *jure mariti*. Her executors do now pursue Balhousie, as heir, for payment, who *alleged* absolutor, because he had paid to Pilton her husband ; and albeit it was provided, that it might be leisome to his wife to dispose upon the sum, yet she had not done it, but the husband had provided her with all abuliaments necessary. It was *answered*, That the husband's *jus mariti* was excluded by Mr Francis himself ; and whatever might be alleged of what belongs to a wife *proprio jure*, that nothing more can remain with her but her necessary aliment, and all the rest being in the person of the wife, doth return to the husband *jure mariti*, albeit the *jus mariti* were renounced in her favours ; yet the right here is freely given by a third party, excluding the husband ; which third party might gift with what provisions he pleased, and his gift returns to himself, unless these provisions be observed, and this must be thought to be a gift, seeing it bears no cause onerous. It was *answered*, That it bears good considerations, and expresses not to be a gift, or done for love and favour. *2dly*, If the gifter were opposing the husband, or his creditors right, and making use of that provision, that his gift might return, seeing the provision was not kept, it might have weight ; but here the donatar's heir makes not use of the provision, but concurrerth with the husband and payeth him.

THE LORDS found the payment made by the donatar, or his heir, to the husband, relevant to exclude the executors of the wife.

Stair, v. 1. p. 434.