

nation of an heritable Bond by a Wife to her Husband was found revocable by her after his Death as a gift by a posterior Disposition which was found effectual against a singular Successor acquiring bona fide for an onerous Cause from the Husband 15 December 1676 Ingles contra Lawry.
 Donation by Infeftment in Lands granted by a Man to his Wife, was found revocable pro tanto by an Infeftment by Annuellet granted to his Daughter out of these Lands 15 December 1674. Kinloch contra Craik. 2^o
 A conjugal gift is tacitly revoked by the Donor's contracting Debt for payment whereof the Creditor affects the Subject of the gift. See Jo. Nesbet in his Opinion/ Doubts in Law donatio int. vir. et uxor. that the simple contracting Debt, is a tacit Revocation of an anterior gift made by the Debtor in Favour of his Wife: in so far as, if he or his Heir have no other Estate to satisfy the Debt, the Creditor may recur against the Subject disposed to the Wife. But Sir James Stewart thinks (Answers ibid.) the simple contracting Debt, be no Revocation. And yet with the same Breath, he seems to fall in again with Sir John's Argument when he adds that the Creditor not being able after the Husband's Death, to recover Payment aliunde may have Recourse against that which was gifted to the Wife: Whence the contracting of Debt must imply a Revocation in the Event of not Payment: seeing otherwise the Creditor could no more quarrell a prior gift to the Wife than he could reduce such a gift made to a Stranger which no posterior Creditor can impugn. However it is certain, that if a Husband's Creditor apprise or advise in the Husband's Lifetime, Lands given to him by his Wife before the Creditor's real Diligence: the Apprising or Advice being a legal Dissipation, and medium impedimentum to hinder the Confirmation by his Death to be drawn back; it would be construed a Revocation, as if the Husband had actually alienated the Lands. Nor could the Wife have Action against the Heir, on account that the Estate which would have been hers, was evicted to satisfy Debt the Heir was liable for: because the Donation was virtually revoked in Manner aforesaid. Sir James Stewart in one Place (ibid.) advances by him to his Wife the Legal of that apprising would not belong to the Wife, tho the Husband revoked not expressly the Disposition made to her. But in another Place (ibid. lit. Revocatio) that Lawyer says, that unless the Husband do otherwise revoke, the Wife may redeem and purge the comprising either before or after the Husband's Decease; and if he the Debtor should redeem in his own Time, the Donation would revive, but still so, as it may be revoked nisi morte confirmetur.

A Donation by a Man to his Wife in Life poustie may, even in lecto agnitionis be cut off, not only by an express Revocation, but also may be tacitly revoked by disposing to another. And yet the Deathbed Disposition (whereof the very making excludes the Gift of the Wife) may be reduced by the Heir, and cannot subsist to his Prejudice; tho the Subject disposed had there been no said Disposition, would have belonged to the Wife, and not to the Heir. But the Wife can not quarrell it in Virtue of the Right of the Heir.

Heir, who is no ways bound to warrant the Gift made to her, Stewart ibid. donat. int. vir. & ux. And a Disposition with a reserved Power to alter on Deathbed, being tacitly revoked by a subsequent Disposition, lecto, the Heir could not divide the posterior Deed, by approving it as an implied Revocation of the former, and reducing the same ex capite lecto, because of the prior Reservation. Stewart ibid. lit. Deathbed.

As by the Civil Law, Gifts may be revoked in certain Cases of Ingratitude: so Gifts between Husbands and Wives are revocable, if the Donatory commit Adultery, tho the Party injured seek no Divorce. Nov. lib. i. tit. 8. id. in fin. But at the same Time the Adultery in the Husband be a great Injury done to the Wife, it is not so great nor hath so bad Consequences, as the like Crime committed by a Wife.

Albeit the grantor of a Conjugal Gift should swear judicially never to revoke it, a promissory Oath of that Kind, could not hinder the Effect of a tacit indirect Revocation by Diligence, at the Instance of his Creditor, or by a posterior Deed in Favour of another for an onerous Cause. Nam qui edem facilitate jurat quia donat: and Gifts inter conjuges bene sunt revocabile in Law, cannot be supported by an Oath, which ought not to be vinculum iniquitatis so that any Perjury thence ensuing deim solium habet illorem.

But a Disposer in free Gift, whether Man or Woman ratifying judicially upon Oath, cannot revoke directly, because of the Oath interposed which would authorize Downright Perjury. Dilect. Doubts lit. donat. int. vir. & ux. junct. Stewart. Answers ibid. Tho a Deed confirmed by a Minor's Oath be null, and the executing such Oaths severely checked Act 19. Par. 3. Ch. 2. There is this Difference betwixt a Man's gift to his Wife, and hers to him: that the former will be sustained as a remuneratory gift propter nuptias simply if there was no Contract of Marriage, and it be moderate 25 March 1635 Lady Lawrystown contra Lady Dunipaul 5 December 1676 and 12 January 1677 Ingles contra Lawry observed by Dirlleton. Tho where a Husband granted two Infeftments at two several Times, to his Wife who had no Contract of Marriage; the first only was sustained in Place of the Contract and the Second found revocable 23 November 1664 Halyburton contra Portous as without an onerous Cause; and a Gift by a Man to his Wife may be revoked, in so far as it is accoritant, or unsuitable to the Quality and Condition of the married Persons 27 June 1677 Shot and Birny contra Murrays. 2 November 1662 Children of Wolmet contra Douglas and Cunningham. Whereas a Gift by a Wife to her Husband is revocable, except it bear either an Implement of the Contract of Marriage, 15 December 1676 Ingles contra Lawry 12 January 1677 inter eodem observed by Dirlleton.