

not see by what Authority Sir Ja Stewart (libid. tit. donat. part. can.) ^{doubts} if such a gift ^{would} as a Legacy void by the Donator's deceasing before the Donor.

The Effects of the conjugal Society with Relation to the Husband.

These are either active, or passive. The active Effect of it is, jus mariti, which includes a Power over the Wife's Person and an Interest in her goods. By the Roman Law, a Wife was not in potestate viri, but either subject to the Father's Authority, or sui juris that is in her own Power and Master of her own Rights. But the Husband being by divine Appointment Head of the Wife, he has over her an economical Power and Authority, proportioned to the Manner of their Union. For as Woman was at first made for Man: so after the Fall by her being first in the Transgression she became the weaker Vessel, and more subject to her Husband's Authority and Government, which is now regulated by the civil Laws of different Nations. By our Law a Husband hath Power over his Wife's Body as the Scripture speaks 1 Cor. 7. 4. He may recover her from any that withholds her from him: except in the Case of an allowed Separation, upon the Account of his so outrageous Cruelty towards her, that she cannot safely dwell with him. Stair lib. 1. tit. 4. n. 9. She must follow and live with him, some and obey him in Cases within the Limits of reverential Love and Duty. He may give her moderate Correction when she turns insolent and disobedient. l. 24. s. 5. ff. solut. matrim. Nov. 117. cap. 14. Carproz. crim. part. 1. q. 12. n. 50. But a Husband beating his Wife cruelly and unmercifully is liable to an arbitrary Punishment Carproz. ibid. n. 51. By the Roman Law a Woman under Tutors or Curators at her Marriage continued so, notwithstanding of the Marriage. Nay her Husband could not so much as aspire to be her Tutor in bonis receptiis. But by our Law a Husband in Consequence of his natural Power over the Wife's personal Goods, is Tutor and Curator to her so that, if she was under the Tutory or Curatory of others formerly, that Power is turned over by Law upon her Husband, who must authorize her in all things judicial and extrajudicial. Stair ibid. s. 18. Yet a Wife is not quite in the same Case as a Minor having a Curator, for a Minor will be restored if seized against a Deed done with Consent of his Curator, whereas a Wife having her Husband's Consent to any Deed she makes, will not be relieved. Stewart ibid. tit. donat. int. vir. & ux. Again a Minor's Disposition in rem Curatoris is conjunctive or Liferent Right essentially consent to her Husband's Deed, tho' it be certainly in rem quod. Stewart ibid. The Communions of goods according to the ordinary Rule of Society, doth resolve into an Equality, where no proportions are regulated and determined. l. 1. inst. de societate. Yet in this conjugal Society the Husband, in Consequence of his inherent Power over the Wife, enjoys a transcendent Pre-rogative in the

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the Management and Disposal of all the goods under Communions, whether belonging to the Wife or to himself, that hath truly all the Effects of Propriety during the Marriage. This Branch of the jus mariti includes two things, viz: 1^o a Right to manage the Wife's whole Fortune, to the joint Use of him and her towards maintaining them and their Family, and to support and defray the other Charges of the Marriage & 7. pra. ff. de jure dot. l. 20. C. cod. 2^o A Right of Property in the Moveables falling under Communions. The confounding of which two Rights, occasions this Matter to be generally misund. or stood. 1^o A Husband hath Right to manage his Wife's whole Fortune heretable and moveable, and this ~~is~~ Faculty is so inseparable from his Character, that any Reservation thereof by the Wife, or Renunciation by him before the Marriage, is ineffectual and accrues or falls back to himself, like Water returning from a higher ground upon which it was thrown. Stair libid. s. 9. Such a Renunciation, to take the Power and Government from the Husband and state it in the Wife, being a Pactum contra bonos mores and void in Law. Thus a Woman having in her second Contract of Marriage, reserved to her own Disposal a part of a Liferent formerly belonging to her, as to which the Husband renounced his jus mariti; that Reservation not being alimentary, was found to return to the Husband jure mariti 13 July 1670 Nicolson contra Johnston. And a Lady having, while she was in a Treaty of second Marriage, disposed a part of her jointure to a Confidant upon Back-bond, to employ it for the Use of her designed Husband, her self and her Family; the Husband was found to have Power to manage and apply it for the Use of the Family, albeit by his Contract of Marriage subsequent to the Bond, he renounced his jus mariti and all Right he would have by the Marriage 9 Feb. 1667 Goullis and L. Collington contra Lady Collington, and Tenants of Inn. 2^o The Husband hath Right to the Property of all his Wife's Moveables falling under the Communions: that is Species of Goods, Sums of Money, personal Bonds or Tickets not bearing Impairment, Rents of Lands, and Annuallments of heretable Bonds; all which he may alienate and dispose of at Pleasure stant matrimonio Stair ibid. s. 17. and his Creditors may affect them 25 November 1709 Turnbull contra Creditors of Eldon. The Reason is because Marriage is a legal Affignation to the Husband of all his Wife's moveable Effects of the Nature aforesaid. Which Affignation needs no other Intimation than the Marriage, and is preferable to any anterior voluntary Right not intimated before the Marriage 10 December 1667 Auchinleck contra Williamson and Gillaspie. The Benefit of a Man's Renunciation of his Wife's jointure before their Marriage, which he obliges himself to renew in Favour of her Affignys, when and how oft he shall be required; was found to recur to himself jure mariti immediately after the Marriage, the Wife not having exercised the Faculty of affigning before the

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