

Marriage were tried and proved before the Commissaries of Edinburgh 25 January 1711 Cameron contra James. 2<sup>d</sup>. A Husband, during the Marriage, is liable to moveable Debts contracted by his Wife before the Marriage: that is Debt of the Nature of those, which, if growing owing to the Wife he hath Right to *jure mariti*. For which Debts he will be liable tho' far exceeding the Profit he hath by the Marriage: yea even tho' he get nothing by his Wife or that she had no Debts of that Kind owing to her Stair lib. i. tit. 4. s. 17. Because if there had been any, the same would have belonged to him *jure mariti* et *quom sequitur commodum, cum debet sequi incommodum* l. 10. ff. de *reg. jur.* For such Debts his own Lands or heritable Rights may be adjudged to that when the Lord Stair (ibid.) says, that there is neither Decision nor ground for making the Husband's Lands or heritable Rights liable for the Wife's Debt; this must be understood of her heritable Debt. And what his Lordship there proposeth as a thing doubtful, is now cleared viz. that the Wife's heritable Debt will not affect the Husband *quoad mobilia*. He is not liable for the principal sum in his Wife's Bond bearing Annualrent, but only for the Annualrent thereof during the Marriage 4 Feb. 1704. Captain Gordon contra Campbell Casnach 13 July 1700 Gordon of Cults contra Lady Gight and her Husband. Yet a Bill of Exchange due by a Wife, which bore Annualrent *ex lege*, by the Form of Payment's being expired before her Marriage was found to be moveable as to the *ius mariti* and to affect her Husband January 1725 Lady contra Sir James Nicolson. In regard only sums bearing Interest *ex pacto*, as Obligations for Money containing Clauses for Annualrent are reckoned heritable *quoad fixationem et relictum* tit. 32. Par. 1. Sect. 1. ch. 2. a third Husband was found liable for Moveables that his Wife intruded with in her first Viduity without previous Discussion of the Representatives of the second Husband who got these Moveables, reserving to the third Husband to pay for them as records for his Relief 10 Feb. 1663 Dumber of Kemprius contra L. Frazer. But a third Husband was not found liable for his Wife's Intrusions during her second Marriage, till the Heirs and Executors of the second Husband were first dissolved 20 March 1629 Mattheson contra L. Wariston. Albeit Obligations of Wives contracted by their committing Fractions before or after the Marriage, are effectual against themselves, these do not affect their Husbands who are not liable for the Fractions of their Wives. Spotswood Pratt. tit. Husband and Wife Stair ibid. s. 17. According to the Rule of Law, *ne uxor pro marito vel maritus pro uxore conveniatur*. Thus a Husband was not found liable for a Spulzie or wrongous Intrusion committed by his Wife *stante matrimonio* without his Knowledge or Approbation, albeit the Husband, after getting Knowledge of the Fact, raised no Dislike thereof, and the same was done in his Name upon a null Decree at his Instance; and in contravention of Law borrowings, a Master is answerable for the Fact of his Servants

if he, after being informed thereof, receive and entertain such Servants 2 Feb. 1620 Scot contra Banks. Nor was a Husband liable for the Penalty of an Act of a Kirk-Session contravened by his wife Stair ibid. But a Husband was found liable for his Lady's demolishing a Mill and Dam thereof, tho' he was in the mean time out of the Country, in respect the Lady was by him *proposita negotiis*, set over his Affairs, and had used her Husband's domestick Servants to assist her in that offence Spotswood Pratt. ibid.

## 3.

## The Effects of Marriage with Relation to the Wife.

These are so far *interest* in the paraphernalia, her paraphernal goods. These in the Roman Law generally taken are all goods belonging to the Wife, besides her Fiches, or all the goods which a married Woman has, besides those which have been given with her in Marriage, of which she retains the Property l. 8. C. de pact. conuict but in a special Sense, are those *proterdotalia* whereof the Administration is yielded to the Husband d. l. 8. & l. ult. C. cod. And therein differ from *receptitia*, that are goods whereof the Wife reserves to herself the full Right of Administration, as well as the Property. We have Nothing resembling those *receptitia* in our Law, except that *peculium* given to a Wife by her Father, or any Stranger, excluding the Husband's Interest therein. Paraphernalia (from *para* proter and *perna* dos) are taken in our Law for those goods or Things belonging to a Wife as absolute Proprietary, exempted from the Communion of Moveables, and from the Husband's Administration, or the Diligence of his Creditors. Which the Wife may dispose of without the Authority and Consent of her Husband, and may improve or put them to what Use she pleases, tho' the Husband having no Right to control her, even altho' she had delivered them into his Custody d. l. 8. & d. l. 2. Some things are of their own Nature paraphernalia, as those peculiar to the Wife's Person, and no Ways proper to the Husband's Use; unless of greater Value than suits with her Quality: as *mundis* or vests, *muliebris* her wearing Cloaths or personal Ornaments, Ribbons cut or uncut, and Earrings. Under which Kind of paraphernal goods Linnen on the Wife's Person in Childbirth and Bed are comprehended but not Linnen in the Child-bed, or in the Room where she brought forth a Child; nor yet the Child's Whistle spoon or Porringer, which are reckoned only common Moveables 15 January 1697 Executors of Dick contra Maffie her Husband. Other Things, which are of common and promiscuous Use to Man and Woman, as Rings Watches, Buttons for Sleeves, dressing Boxes and Glasse, the Gilet-Book the Bible and Books of Devotion, Chest-drawers, and a Purse of gold, and so not of their own Nature paraphernal goods, may become such, by the Husband's giving and appropriating them to his Wife before or on the Marriage day, or by giving them to her afterwards