

and not taking them back from her in her Lifetime. But such things given by him to her after the Marriage, tho before Partys went to Church, are revocable by the Husband's making Use of them himself or taking them back during the Marriage; tho not revocable after the Wife's Death if she continued to possess them so long as she lived. *ead. die inter eadem.* M^o dals of gold in the Possession of a Relict, pretending to have them from her Husband were found not to belong to her unless they were gifted by him at or before their Marriage; with the proving whereof she is burdened, because giving is not presumed from her Possession, who had *capie* Receipt to such Things after her Husband's Death. *J & 23 July 1709 Lady Raucherillor contra Lady Milton.* She it be hard for her to prove that such *jocalia* were her Marriage gifts; it not being ordinary for the like to be given in the presence of Witnesses. But things of common Use so appropriated to a Wife, her Husband, are reckoned *paraphernalia*, only with Respect to him who appropriates them, and esteemed *comparum Moveables*, as to a Second Husband, unless also appropriated by him to the Wife 15 January 1697 Executors of Dick contra Maffie. Cabinets and Chests of Drawers wherein the *paraphernalia* are kept, are not *paraphernalia* goods, but fall under the Communion of goods *ead. die inter eadem.* The Law of England allows of no *paraphernalia* goods besides the Woman's Apparel. 2^o A Wife cannot be pursued or cited, without calling her Husband for his Interest; because he is her Governour Tutor and Curator and if she marries during the Dependence of a Suit against her, it must stop till the Husband be cited by Letters of Supplement 29 June 1627 Baillie contra Robertson. Which being done, the process continues against him for his Interest *Stair lib. i. tit. 4. s. 13. McKenzie inst. lib. i. tit. 6. s. 11.* But a Wife was allowed to be pursued, without calling her Husband, where he had been 20 years abroad out of the Country, and she was repaid a Widow 19 June 1663 Hay contra Carstorphine. A Husband being liable for his Wife's Debt is not bound to let her depone to his Prejudice, to constitute a Debt against him. For neither a Wife's Oath of Verity, or Oath of Calumny which upon her being held as confest would have the Effect of an Oath of Verity, can be taken against her Husband, but only can be taken to affect her and her Goods after his Death, or to work against her Heirs or Executors after her own Death 9 March 1627 Hot contra Lady Covington. 11 January 1676 Paton and Mopman contra Pitcairn and her spouse. *ead. die Bruce contra Alexander. Spotswood Bratt. tit. Probation by Oath of Party.* But in an Exhibition ad deliberandum, at the Instance of one Heir Portioner against another the Defender was found liable to depone, or to be held as confest, tho she was clothed with a Husband, and he out of the Country 27 January 1680 Cunningham contra Le Lady Cardross. A Wife's Oath was found to prove against her Husband, where the Matter was litigious by a Process against her before her Marriage 29 June 1663 Edgar contra Murray. In a Pursuit at

at the Instance of a Minor against his Tutor after she was married, the Pursuer having referred to her Oath, that she had intromitted before her Marriage with divers Particulars belonging to him; the Husband of the Tutor pleaded, that she could not declare to his Prejudice. It was answered, that the Tutor's Action *in jus quæsitum* against his Tutor, could not be in a worse Case as to the *modus procedendi* by her interducing a Husband; and her Intromission being such as could not be known to any Person but her self, nor proved otherwise than by her Oath; it were hard that the Minor should be abridged of his Proof by her Deed. For this is not a Case where a Debt is to be constituted only by a Wife's Oath; but the Ground of the Debt is constituted by Writ, viz by the Nomination or Letter of Tutorship. When a Pursuit is commenced against any Person, the Defender cannot by Assignment cut off the Pursuer from his Proof by the Oath of the Oath; and Minors are more privileged, at least ought so far to be favoured, as not to allow their Tutor to ruin them *convenuto ad secundas nuptias* and *viduitas rationes.* The Lords thought the Case considerable: and ordained the Tutor to declare upon Oath, reserving to themselves to consider what her Declaration should import 15 Feb. 1676 Marshal contra Forrest and her Husband. 3^o She cannot pursue her Husband, except upon very special and urgent Considerations: as when *vergit ad mortem*, or when the Wife hath quit a present Judgment for an Obligation to infect her in other Lands which the Husband is going to alienate 13 July 1630 Lady Glenberog Supplicant contra her Husband. Or when she pursues an Attachment against him who hath divorced from her 21 December 1620 Lady Foulis contra her Husband. Or when the Intention of a Deed done by a Man in Prejudice of his Wife's Contract of Marriage, is pursued by her with the Concurrence of Friends at whose Instance Execution thereon was appointed to pass 12 Feb. 1663 Locke contra Paton. Or where a Marital Obligation both of its own Nature require Execution to pass in the Husband's Life, as an Obligation to infect his Wife in particular Lands. But a general Obligation to employ Money for her, or to infect her will be neither ground of Action or Inhibition to her against the Husband, unless in the aforesaid Case of his declining to Coverture, or going to do inconsistent Deeds derogatory thereto *Stair ibid. s. 15.* Nor can a Wife charge or pursue any other Person, even for an heritable Debt without the Concurrence of her Husband 8 July 1673 Hacket contra Gordon unless he be forfeited *Stair ibid.* or declared fugitive, because then he hath not *personam standi in judicio*, and wants the Protection of Law; or unless he unreasonably refuse to concur 9 January 1623 Marshal contra Marshal 8 July 1673 Hacket contra Gordon. Or in those singular Cases, where Action is allowed to a Wife against her Husband. 4^o A Wife's Bond or personal Obligation for Debt even with the Husband's Consent, is null *Stair ibid. s. 16. McKenzie ibid. s. 12.* Because she being under the Power of her Husband, cannot employ the Money profitably for her own Use. Nor can she be obliged to perform any Deed which is to receive Implements in moveable Things, by Reason that during the Time of the Marriage she has no Property of Moveables, which all belong to her Husband. Nor yet can a Woman's Obligation stand in matrimonial effect the goods and gear moveable, which may by Law fall to her after her Husband's Decease: 19 Decemb. 1626 Matthew contra Sibbald because till her Husband die it doth not appear that any such goods will belong to her, or what