

Trust as Husband, the Wife being sub potestate viri; and the Marriage the Cause of her Provision 14 July 1676 Lockhart and her Husband contra Bonner. The Time was, when Wives for their personal Provisions in their Contracts of Marriage were preferred to other personal Creditors of the Husbands 20 January 1681 The Creditors of Brown & Co. 1662 Crawford contra E. Murray 8 Novemb. 1677 Similar contra Ritchardson confirmed to the civil Law l. 12. C. qui pot. in pig. Seeing a Wife during the Marriage cannot act for her self, and all Persons dealing with the Husband might know him to have a Wife and so beware of his Preference. But now Wives enjoy no Preference to ~~the~~ Creditors, but according to the Priority of their Diligence 17 Feb 1680 Keltch contra Leth 19 Feb 1713 Allan contra Creditors of Ceghorn. And generally it is so in other Places where, as in Scotland, the Communio of Goods between Man and Wife obtains Vinc. Comm. ad tit. inst. de actione. Gudel. de iure noviss. cap. 18.

The legal Provisions which a Wife hath Right to by her Husband's Death, are jus relicte in the Moveables, and a Force of his Lands, an Aliment till the next Term after his Death, and the Expence of her Mournings if it become her to have Mournings. All which shall be handled in the proper Places. And albeit she hath absolute Right to her own paraphernalia, whereof no part falls under her Husband's Executory she hath a Share of the Habilliments of his Body falling under Executory Stat. lib. 1. tit. 4. s. 22.

By Dissolution of the Marriage thro the Wife's Death, the Husband surviving hath Right to the Moveables that were in Communio; deducting the Wife's Share, which goes to her Executor, and the Children's Legitime if there be Children of the Marriage: and if the Wife was an Heiress, the Husband, who had a Child by her that was heard cry, hath Right to the Courtesy of Scotland. All which is also explained in the proper Places. Albeit a Husband coming to discover after his Wife's Death Goods that belonged to her separate maintenance, is still intitled to pursue for the same yet moveable Debts owing by her then first coming to Light, or called for, will not affect him when the Communio is dissolved Stewart answers to Dist. Doubts tit. jus mariti. A Man is no further liable to pay the Debts of his deceased Wife than in so far as he was a Gainer by her Estate, beyond the onera matrimonii, or a suitable Forth, which he might have got with another Wife, or in so far as his Estate was affected by complete Diligence against him during the Marriage, unless he then gave a Bond of borrowed Money for the Debt. Because, tho it was reasonable, that so long as he stood substituted in his Wife's Room, he should answer for her Debts: yet when his marital Interest ceaseth

ceaseth the Obligation he lay under for these Debts should also cease. Thus altho lites Contestation be a kind of judicial Contract in Law: yet a Husband pursued for a Debt owing by his Wife, who dies after lites contestation and an interlocutory Sentence in the Cause, concerning him for his Interest to give Bond to pay what should appear due by her, was found to be free thereof, no Bond being given 11 July 1664 Dumber of Kemp-rigs contra Frazer. Nor was a Decree obtained against a Wife and her Husband for his Interest, without Execution during the Marriage, relevant to oblige him to pay the Sum decreed 25 December 1665 Burnett contra Lepers, or to oblige the Heirs of a Husband dying before Execution, Hope tit. transferring Kinloch contra Dumber. Yea a Man charged summarily for his Interest, and denounced upon a Decree obtained against his Wife before the Marriage 20 March 1627 Knows contra Kneeland, or who was denounced and had his Goods arrested upon a Decree against his Wife and him for his Interest 23 January 1670 Wilkie contra Stewart and Morrison, was free by the Wife's dying before the Husband's Goods were affected by pouding or a Decree of Forth-coming. Albeit the Creditor might insist against the Donatory of the Husband's Estate, for the Wife's Debt contained in the Flooring upon which the Husband was denounced eod die inter eosdem. A Husband cannot after his Wife's Death, be concerned as vicarious Instrumentor with her Goods to pay her Debt because he qua Husband being dominus omnium eius bonorum, continues only after her Death that Possession which he once lawfully acquired 7 Feb. 1629 Brown contra Dalmahoury. But a Husband is always liable for his Wife's Debt even after her Death, in quantum est lucratus by the Marriage 27 January 1674 Spruel contra Stewart. Which is not understood of every Lucrum or Benefit, or a moderate ordinary Forth proportioned to the Charges of Marriage, for sustaining whereof Forths are given. But he is only accounted a Gainer whose Profit by his Wife does far exceed these Charges; or is more than a suitable Forth, which he might have got with another Wife 23 December 1663 Burnett contra Lepers. Nor was a Husband reckoned to have gained by his Wife's suitable Provisions to the Wife and Children of the Marriage 22 January 1714 Lockhart of Carnwath contra Dundas. A Husband who gives Bond for his Wife's Debt, is not exonerated therefrom by Dissolution of the Marriage 7 July 1680 Stewart contra L