

No 384. man and wife, resolving in a fee to the man, and a liferent to the wife, seeing these gifts were given after the marriage, and for the use of a family, they were not thereby in the wife's possession, though in her custody, but in the man's possession, who thereby became proprietor, and by the dissolution of the marriage, these gifts continued with him as proprietor thereof; at least the gifts being bestowed after the marriage, ought to divide equally betwixt the man and the wife, because they were then in a conjugal society, and the gifts must be presumed given to them as in that society; so that by the dissolution of the conjugal society, the husband and wife had equal share; for the dissolution of the marriage doth restore either party to what was theirs before the marriage; but as to what was gifted to them during the marriage, it was possessed by them *in communione bonorum*, as all their moveables would have been, if the marriage had continued year and day; and therefore, by the dissolution of the conjugal society, though within year and day, what was gifted during the marriage, without expressing on whose account, must be understood to be gifted to both the spouses, and to divide equally by the dissolution of the marriage.

THE LORDS found, that these gifts did equally divide betwixt man and wife, unless they were *jocalia* proper for the wife, being gifted after the marriage, and delivered to the wife, without expressing on whose account.

Fol. Dic. v. 1. p. 414. Stair, v. 2. p. 670.

No 385.

In an action for repetition of tocher, the wife having died within the year, the Lords allowed the husband to deduct debts due by the defunct before the marriage, and paid by him; but refused deduction of aliment and other expenses bestowed during the marriage.

1681. *February 23.*

GORDON *against* INGLIS.

A REPETITION of a tocher, because the marriage dissolved within year and day without bairns. The husband craved deduction of her marriage clothes and feast, and for her entertainment during the standing of the marriage, and the expenses of her funerals, seeing it was usual for women and their friends to furnish their own marriage clothes and feast, and the rest would have affected her though she had died without marriage, and why should he be a loser. THE LORDS refused to deduct any expenses, except for the bridal clothes, the price whereof was a debt preceding the marriage, and for the funeral charges.

Fol. Dic. v. 1. p. 414. Fountainball, MS.

* * See Stair's report of this case, No 126. p. 5924.

1710. *November 14.*

ROBERT DEWAR, eldest SON to GEORGE DEWAR, Wright in Edinburgh,
against MARGARET WRIGHT, his Father's Relict.

No 386.

IN a process at the instance of Robert Dewar, against Margaret Wright, his father's relict, the LORDS refused to ordain her to restore to the pursuer a silver

medal that had been gifted to her by his father *intuitu matrimonii*, the marriage having followed; albeit it dissolved within year and day by the husband's death. Here was *lis de paupere regno*.

No 386.

Fol. Dic. v. 1. p. 414. Forbes, p. 440.

S E C T. IV.

The birth of a live Child saves the right of the Husband.

1612. Jan. 12.

OGILVIE against RIDDOCH.

IN an action of ejection and spuilzie, pursued by Mrs Catherine Ogilvy, relict of John Riddoch, against William Riddoch, her good father, for ejecting her, after her husband's decease, out of the lands of Mulliegan and Schiells, wherein she was infeft in conjunct fee and for spulziation of the goods, this exception was repelled, that her infeftment could give no action, because her husband died within year and day, in respect of her reply, that the time of this ejection she was with child, six months gane, of which child she parted four months thereafter, and sae her infeftment was in.

No 387.

Fol. Dic. v. 1. p. 415. Kerse MS. fol. 64.

* ** Haddington reports the same case.

Jan. 28. THE husband being slain within the year after his marriage, and his wife being in conjunct possession with him of the lands which were, by their contract of marriage, to be her conjunct fee, if, after the husband's decease, his nearest friends dispossess the relict against her will, she will get action of ejection against them, especially if she be with bairn, albeit she bear it not quick.

Haddington MS. No 2369.

1632. July 20.

IRVIN contra ROBERTSON.

By contract of marriage betwixt one Irvin and Robertson, ——— Irvin, brother to his sister then contracted to be married on Robertson, is obliged to pay to the said Robertson, in name of tocher, the sum of 2000 merks; and they being married, after procreation of a bairn, who died before the parents, but within the space of a year after the marriage; and a space before the expiring of

No 388.

Marriage having dissolved within year and day, and a living child being born, which died within