

No 46.

1709. July 8. Lady RANKEILOUR *against* Lady AYTON.

GOLD medals gifted by the husband, before marriage, fall not under the division of moveables betwixt husband and wife.

*Fol. Dic. v. I. p. 388. Forbes. Fountainball.*

\* \* \* See this case No I. p. 5759.

1711. June 27. The Lady BUTE *against* The EARL, her Son-in-law.

No 47.

A purse containing medals and purse pennies was allowed to belong exclusively to a lady, but not cash she had in her own keeping.

THE last Earl of Bute, by his bond of provision in March 1710, (before he went to the baths in England, where he died in May thereafter) granted a life-rent to his Lady of 3300 merks yearly, payable at the first term after his decease; and his son declining payment, she raises a process against him, both for bygones, and in time coming, and likewise for the annualrents of her own son's patrimony. *Alleged* for the Earl, Her life-rent was *quoad* bygones more than compensated and extinguished, by her intromission with lying money and gold, beside the defunct, or actually in her hands the time of his decease, unaccounted for; and offered to prove it by her oath: And she having deponed, acknowledged she had, at the dissolution of the marriage, a purse containing sundry medals and purse-pennies, given by the Earl and other friends to her and her son, in which number there were some guineas, and she judged the whole might be about L. 60 Sterling, and that she had nothing as the product of any trade she drove, except about 2 or 3 elns of Alamode: And that she lent out no money during the marriage, nor any other for her behoof. And being interrogated, What lying money she had in her hands at her husband's death? depones, She had about L. 40 Sterling, being presents paid by the tenants to the family, which the Ladies ordinarily lifted in specie for the house; and such as were not paid in kind were paid in money, and the Earl allowed the same to her. This oath coming to be advised, it was *contended* for the Earl, That the quality adjected of their being gifted was wholly extrinsic? Neither had she distinguished, nor specially condescended, what was current gold, and what were purse-pennies; for probably, under that denomination, she might include Spanish pistoles, French Louis-d'ors, Hungary ducats, English Jacobus's and Carolus's, &c. though all these had a determinate known value; nor has she told when they were given, whether before or after the marriage, nor what she got from friends; and even none of these are paraphernal, like watches, rings, bracelets, &c. but are *epicæni generis*, as commonly used by men as by women: And, in the famous decision *supra*, 15th January 1697, Dick *contra* Massie, No 45. p. 5821. there is a full and ample enumeration and detail of what is the *mundus et vestitus muliebris*, and what not; and there a purse of gold was not reckoned *inter paraphernalia*: And, in a later case, the Lady Rankeilor *contra* the Lady Ayton, No I. p. 5759. they Lords found a gold medal, called an

emblem of the siege of Breda, valued at L. 10 Sterling, not to be *inter jocalia*, but to belong to the husband's executors. And I remembered the Lords of the Dutchess of Lauderdale's process against the Lady Boighall,\* as executrix to Lauderdale's first Lady, who died at Paris, that the Lords had much restricted these paraphernalia; and cited Julius Clarus, and other Italian lawyers; because of wives easy access and great influence they might have on their husbands, to convert great sums of money into such trifles and bagatelles, to the evident prejudice and diminution of his fortune; and therefore she must prove they were gifted. Answered for the Countess Dowager, That the present Earl had not the least pretence to retain her jointure on this frivolous account; for it was of known notoriety that men of far less quality than the Earl of Bute gave purses of gold of more value than this to their wives, and were never reckoned to belong to the husband, or fall under his *jus mariti*; yea, not so much as to be affectable by his creditors, who certainly might have a better claim than the heir; and Ulpian, l. 32. § 2. *De donat. inter vir. et ux.* expresses it very generously, 'Fas est, eum quidem qui donavit pœnitere, hæredem vero id eripere forsitan contra supremam voluntatem ejus qui donaverit, durum et avarum est.' If a creditor were evicting it, his case might be favourable, gratuitous donations not being so easily sustained against them; but where the question is only with the heir of the donor, a person of quality, and the gift very disproportioned, never revoked, it is invidious, and so *morte confirmatur*.—THE LORDS, by plurality, found my Lady had right to the said purse, and that it did not belong to the husband, nor his heir; but as to the second part of the oath about the L. 40 Sterling of presents, seeing it was acknowledged they used to be applied to the use of the family, the Lords found it in a quite different case from the former, and that it belonged to the husband; and sustained the compensation *quoad* that, the quality of the oath being extrinsic.

*Fol. Dic. v. 1. p. 389. Fountainhall, v. 2. p. 744.*

1716. July 31. JEAN PITCAIRN and her Husband against JOHN PEUTHERER.

IN a process betwixt these parties, this question having fallen to be considered, viz. whether a chest of drawers, wherein a wife kept her clothes, was a part of the *paraphernalia*, and did thereby become the wife's property, exclusive of the husband's *jus mariti*?

And it was contended for Pitcairn the pursuer; That it was to be reckoned among the *paraphernalia*, because these do not only include clothes, but those things that are proper for their custody; thus Paulus, lib. sent. 3. cap. 6. 'Mundo muliebri legato ea cedunt, per quæ mundior mulier lautiorque efficitur; velut speculum, conchæ, situli, item pixides, unguenta, et vasa in quibus ea sunt;' which directly determines the case, that is, whatever is necessary for keeping the things also is understood to pass with them; and it is very sure that chests of drawers are absolutely necessary for custody of clothes *ad munditiam*.

No 48.

Found, that a chest of drawers, appropriated for keeping a wife's clothes, is a part of the *paraphernalia*.

\* Examine General List of Names.