

## SECT. VII.

## Money lent or given by a Wife.

1635. November 17. FENTON against CARNEGÝ.

ONE James Fenton pursuing William Carnegy for delivery to him of 950 merks, which was given by umquhile James Fenton's wife, in custody to umquhile Margaret Hepburn, spouse to the said William Carnegy, and was delivered in trust to her, being her kinswoman, without the pursuer her husband's knowledge, seeing it behoved to be reputed his money; and the defender granting, that his wife before her decease declared to him, that that money was so delivered to her, and willed him to deliver the same again to the right owner; but *alleged*, that he could not be *in tuto* to deliver it, before the woman's testament were confirmed, who depositated it; and that he might thereby lawfully be exonerated thereof. THE LORDS repelled this allegiance, and found no necessity of confirmation of the wife's testament; but that the husband might challenge and pursue for any money given out by his wife *stante matrimonio*, as for his own proper money, given out during their marriage by himself.

*Fol. Dic. v. 1. p. 388. Durie, p. 779.*

No 39.  
Money lent or deposited by the wife during the marriage, belongs to the husband, and he may pursue for it in his own name.

1727. January 30. RIGG against CUNNINGHAM.

MR RIGG's Lady having granted bond to Enterkin's Lady on the narrative of borrowed money, of which bond she afterwards made payment; the LORDS found that the money which Mr Rigg's Lady paid to the Lady Enterkin, was Mr Rigg her husband's money; and that therefore action of repetition was competent to Mr Rigg for the same; though it was argued to be against equity, that a husband should be entitled to repete, when he is not able to condescend upon any of his money intromitted with by his wife, at that or any former time. See APPENDIX.

*Fol. Dic. v. 1. p. 388.*

No 40.