

DIVISION VI.

A married woman's deeds in what cases effectual against her husband.

SECT. I.

A wife presumed to be *præposita negotiis domesticis*.

1634. June 21.

— against HAMILTON.

CERTAIN furnishers pursuing Sir James Hamilton for the price of certain furnishing, really and necessarily made by them to his Lady, bairns, and family, in his absence, by the space of two years, or thereby, viz. a baxter for bread, and a flesher for flesh, and a cordiner for shoes and patons; likeas they all offered to prove, that before these years pursued for, they were all in use to furnish in that same manner, to his Lady, bairns, and family, diverse preceding years, for which they were well satisfied; as also a part of this same furnishing, now acclaimed, was made by them since Sir James's coming to Scotland, and the said Sir James was partner, and ate of the said bread and flesh in his house with his Lady, for the space of three or four months of the space acclaimed, ay and while he diverted from his Lady and pursued divorcement, (since which time they pursued not for furnishing sinceyne made.) And the said Sir James *excepting*, That he was not in law obliged to pay the said furnishing to them, albeit it had been ever so necessary; because, before his going out of the country, he appointed a yearly provision to be given to his Lady, for furnishing herself, her bairns, servants, and whole family, answerable to his estate and her's, in all necessary and useful things, and which was accordingly paid to her by his servants, who had direction to pay the same, and whereupon acquittances were yearly received from her; so that the pursuers, having no direction or warrant from him, or any by his power, to make the furnishing, he ought not to be liable therefor.—THE LORDS found the exception relevant; for the LORDS found, That the defender having given to his Lady as sufficient a quantity of money yearly, during each year libelled, as might conveniently suffice for maintenance

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The Lords refused to allow accounts of tradesmen, who had furnished necessaries to a gentleman's family while he was out of the country, they wanting his special warrant, altho' they offered to prove, not only that they had such warrant, but that before his departure they furnished goods to himself and family.

The reason of this decision was, that before the husband's departure, he had settled an alimont on his Lady.

No 211. of his Lady, bairns, and family, he was not liable to pay these furnishers, except he had given direction to them, or command to do it, or that he had known that they had furnished her, and also had known that they were not paid therefor by her; for they having no warrant from the husband, what they did without the same, they did it *suo periculo*. Neither was it needful to have been intimated to them, that the husband had appointed maintenance yearly to his wife, whereby they might have looked and provided for their own security, (as it was replied by them) nor were they ever discharged to furnish; which the LORDS did not respect, seeing they had no warrant to furnish, from him; and it was not necessary to them to furnish; for nothing could have compelled them thereto, albeit the husband might have been compelled to aliment his family, which being done by him, he was no further bound in law; and so the action, for the danger of the preparative, was not sustained; for otherwise, wives or servants might bring on many bygone years furnishings upon their husbands and masters, to their overthrow, if they should thereby intervert the monies allowed by the husband, for sustentation of his house, applying the same to any other unlawful use, and bring the necessary furnishing of his house back again upon him; so that furnishers ought only to rely upon the security of payment to be made by those by whose warrant they do the same, and with whom they make their bargains, or else to take payment in hand.

Act. *Cunningham.*

Alt. *Nicolson et Stuart.*

Clerk, *Hay.*

Fol. Dic. v. 1. p. 402. Durie, p. 719.

. Spottiswood reports the same case:

SIR JAMES HAMILTON of Priestfield was pursued by a baxter, a flesher, and a shoemaker, for furnishing made by them to his Lady and children, in his absence out of the country, which they offered, to prove was really delivered by them, and served for the sustenance of the defender's wife and children in his absence. *Alleged*, He offered to prove that he had given a competent allowance to his wife during his absence to maintain herself, her children, and family, viz. 3,000 merks by year, in respect whereof he could not be liable to the payment of their furnishing. *Replied*, They being in use to furnish his house diverse years before, and to receive payment of their accounts, and continuing the same custom, could not be prejudged by any private bargain between him and his wife, which never came to their knowledge, and therefore were still *in bona fide* to do as they were wont, so that he must still be their debtor; and if his wife had mispent it, or converted it to another use, blame his own trust; but the pursuers could not be disappointed, especially the things furnished by them being necessary for aliment, and not exorbitant. *Duplied*, Not relevant, except it were alleged that their furnishing had been made with his knowledge and direction, and that he was in use to pay them himself in

times past, which if it was not, but they *sequuti sunt fidem uxoris*, let them crave her, but not him. THE LORDS, in regard that they had suffered their accounts to run on for two years, and that he had allowed a competent allowance on his house, thought it a dangerous preparative to give way to victualers and such furnishers to come after some years and crave the masters of houses for that which they had furnished to the use of their families before, the masters giving allowance to wives or servants who had ever been in use to pay the said victuallers, &c. for their said furnishing; and therefore sustained the exception.

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Spottiswood, (HUSBAND AND WIFE.) p. 159.

1675. December 7. DALLING against M^rKENZIE.

No 212.

A WOMAN is understood to be *præposita negotiis domesticis*; so that for the provision of her house, she may take from fleshers and baxters and others such furnishing as is necessary; and her declaration and oath may be taken, and ought to be trusted as to the same; and the husband is presumed not to know the particular quantities; and those who do furnish are not obliged to enquire whether her husband has given her money sufficient to provide his house, if she be a person that is not inhibited; seeing the husband has a remedy, if he has any suspicion that she may abuse and wrong him, and may inhibit her.

Reporter, *Glendoick.*

Fol. Dic. v. 1. p. 402. Dirleton, No 310. p. 153.

1677. July 6. JOHN ALLAN against The EARL and COUNTESS of SOUTHESK.

No 213.

JOHN ALLAN, tailor at London, pursues the Earl and Countess of Southesk, for payment of an account of furniture to the Countess, and Lord Carnegie her son at London. The Earl *alleged* absolvitor, because the Countess had gone to London without his consent, and carried his son with her, and therefore he was not obliged to pay furniture advanced to her, which was neither necessary nor profitable. *2do*, Some of the furniture was after an inhibition published and registrated; nor was he obliged for his son's furniture, but the Countess who had a separate estate and aliment, ought to be liable for both. It was *answered* for the pursuer, That he having furnished the Earl's Lady and his son, was not obliged to know that she came to London without the Earl's consent, but was in *bona fide et probabili ignorantia*, and might justly presume she came with the Earl's consent, unless he knew the contrary; and suppose she had come without consent, she behoved to be furnished effeir-

A husband found not liable for furnishings to his wife who had gone to London without his consent, farther than her expense would have been if she had staid at home.