

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.

No 211.

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

1675. December 7. DALLING against M^r KENZIE.

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.

No 213. ing to her quality, which was the Earl's honour and interest, much more the innocent child.

THE LORDS found the Earl liable for the necessary and suitable furniture for the child ; but if the Countess went to London without his approbation, or a just reason from him, that he was obliged for no more furniture to her, than would have been her expenses if she had remained at home, and that whether before or after the inhibition ; but found that if the pursuer advanced any more furniture after the inhibition, he furnished it at his peril, and that the Countess should be accountable for the excess of the furniture before inhibition, out of her own estate and aliment, though falling to her after the foresaid furniture.

Fol. Dic. v. 1. p. 402. Stair, v. 2. p. 534.

* * * Gosford reports the same case :

In a pursuit at Mr Allan's instance against the Earl and Countess of Southesk, for making payment of L. 150 Sterling, as due conform to an account of furniture to the Lady and my Lord Carnegie his son, it was *alleged* for the Earl, That he could not be liable for any furnishing to his Lady, because she had diverted and gone away without her husband's consent, and had a sufficient provision for her entertainment yearly, which had been paid to her ; and as to the furniture made to the Lord Carnegie, he could not be made liable because he was carried away by his mother without his knowledge and consent ; and the pursuer having given that furniture without the Earl's order at the desire of the mother, she was only liable ; and if it were otherways, it was of a general concernment to make parents liable for the entertainment of their children, who, by indirect means, might be taken from them out of the country. It was *replied* for the pursuer, That he being a stranger and in a foreign kingdom, was not obliged to know how the Lady came away, and was in *bona fide* to furnish the Lady and her son, knowing that the Earl of Southesk was liable in law for what was justly furnished ; and albeit there had been inhibition served in Scotland, yet that could not take effect as to furniture in England. THE LORDS did assoilzie the Earl as to the furniture made to the Lady, upon that reason, that she had diverted and gone away without his consent, having a yearly provision settled upon her ; but as to the furniture made to the Lord Carnegie, they found the Earl liable, as having used no means to bring him back again, or hinder his way-going.

Gosford, MS. No 995. p. 670.

No 214.

Whether a wife's oath as to resting owing, ought to affect her husband?

1682. *January.* JOHN CRICHTON *against* MARGARET LOGAN.

A WOMAN cloathed with a husband having granted a ticket for L. 40 she was resting before the marriage, and being charged thereon after her husband's de-