

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-

cease, she suspended upon this ground, That the note was null, as being granted *stante matrimonio*, and then married a second time ; and the charger having referred to her oath, that the debt was contracted before her first marriage, the present husband contended she could not swear to affect him, but only herself and her executors after his death.

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Answered for the charger ; That the matter was litigious before the last marriage, and the charger could no more be prejudged by the wife's posterior marriage than by a posterior assignation ; although the suspension was not insisted in, nor the wife's oath craved before the second marriage.

THE LORDS inclined to find, that the wife could not swear in prejudice of her husband, who might be ignorant of the debt or suspension. But it came not to a vote ; and the contrary seems more just.

Harcarse, (STANTE MATRIMONIO.) No 869. p. 246.

1682. November. JAMES ALSTON *against* PHILIP and SIR JAMES STAMFILDS.

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FOUND that a husband after dissolution of the marriage, was liable for accounts taken off by the wife during the marriage, though without his order, and though she was competently furnished *aliunde* ; but found the husband's father not liable for them, though the son and wife remained in his family, in respect he, the father, had been at considerable charges upon them *aliunde*, suitable to their quality. *See RECOMPENCE.*

Fol. Dic. v. I. p. 403. Harcarse, (STANTE MATRIMONIO.) No 871. p. 247.

* * * Sir P. Home reports the same case :

JAMES ALSTON merchant in Edinburgh, having pursued Philip Stanfield and Sir James Stanfield of Newmilns, his father, for payment of Philip Stanfield's wife's bridal cloaths, who was daughter to Major Biggar of Wolmet, and others furnished to her during the marriage ; *alleged* for Philip, That he could not be liable, the marriage being now dissolved by decease of the said

Biggar his wife ; but her father's representatives are only liable for the same, especially seeing he received no tocher with her. And it was *alleged* for Sir James the father, That he could not be liable, because he was out of the country the time of the marriage, which was made without his knowledge or consent ; so that albeit he was obliged to aliment his son, yet he was not obliged to furnish his wife with bridal cloaths, or others during the marriage, especially seeing he had paid above 5000 merks to his own merchants upon their account ; and seeing the pursuer was not his ordinary merchant, he ought not to have furnished his son or his wife with any cloaths without his warrant. *Answered*, that Philip ought to be liable as husband, who was obliged to ali-