

The Lords thought a wife was to be regulated by her husband's orders where to live, and he was not always bound to take her alongst with him ; as appears in ambassadors, merchants, skippers, soldiers, whose wives staid commonly at home, sufficient maintenance being left and allowed them ; and that they ought not to follow them without their consent ; but, in respect of the special circumstances of this case, they recommended to some of their number to endeavour to cause pay her bygone debts, and to settle somewhat upon the lady yearly in time coming ; and to deal with the Viscount for that effect.

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1703. *December 15.* JOHN CALLANDER of CRAIGFORTH *against* GEORGE MOIR of LECKIE.

GEORGE Moir of Leckie, and John Callander of Craigforth, make a wager, by which Craigforth gives Leckie a bond for 500 merks, and Leckie gives him another bond for 100 guineas, in case Leckie shall not be lawfully married betwixt and Whitsunday 1696. Leckie marries Seton of Touch's daughter before that term ; but it is a clandestine private marriage, without proclamation of banns, and not by a Presbyterian minister of the present established church-government. Craigforth charges on the bond for the 100 guineas : Leckie suspends, that the condition did not exist, seeing he was married before the time prefixed in the bond, and so it is *ipso jure* null.

CALLANDER ANSWERED,—That the condition was, If he should be lawfully married ; which he could not subsume, being latent, without proclamation, and not by a minister authorised by the present established church-government ; and that he inserted the word *lawfully* into the bond, of purpose to prevent all cavilling, hallucination, and guessing, lest they should make a clandestine private marriage : and, to prove this, he offered to adduce the minister, and other instrumentary witnesses in the bond, to take off all ambiguity, and to clear the meaning of parties, as the Lords have often done *ad rimandam veritatem*, and to clear the import of doubtful clauses in writs : in *Clavage's case* against the *Lady Aldy*, in *December 1681* ; *Brown* against *Laurie*, in *February 1676*.

REPLIED,—*Lawfully* married relates not to the solemnity and form, but to the essence of the marriage ; now, it cannot be denied but in this sense his marriage is lawful, seeing his children will succeed, and his wife get her jointure ; and *lawful* here signifies only that he should marry none prohibited by law, or within degrees defended, as it is understood in the 15th Act of Parliament 1567, out of the 18th of *Leviticus*. And where writ is interposed, there is no room for witnesses, which were to make their frail memory judges in such cases ; which were of very dangerous consequence.

Some were for giving the money to the poor, but the plurality were for trying, before answer, what the parties meant by these words, "lawfully married," and to examine the comuners thereon ; for the Lords thought, though witnesses cannot be examined to take away writ, yet they may explain it where it is ambiguous and doubtful.

The word *orderly* married would have been more clear.

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