

1776. December 13. DAVID GORDON against ROBERT SEMPILL.

No. 4.

A husband who had inhibited his wife, and paid her an aliment during the dependence of a process of divorce he had brought against her, in which he prevailed, found not liable to a person who had furnished provisions to her.

See No. 79. p. 446.

DAVID GORDON, residenter in the town of Edinburgh, brought an action before the Sheriff of Mid-Lothian against Sempill, for furnishings to Jane Mann, Sempill's wife, against whom a process of divorce was pending in the Commissary Court at the instance of her husband. Sempill defended himself upon this ground, that before the period of contracting this account, he had inhibited his wife, and that during the depending of the action before the Commissaries, an interim aliment from time to time had been modified. For Gordon it was answered, that although an inhibition against a wife has the effect to make a *præpositura rebus domesticis* fall, so as to free the husband from any general claim on account of his wife's contractions, yet during the existence of the marriage, he still remains liable for necessary furnishings to her, such as aliment, lodging, &c. unless he can show that he has *aliunde* made provision for her; and that the sums modified by the Commissaries were not sufficient both for interim aliment and expense of process. The Sheriff "assoilzied the defender."

An action of reduction of this decree was brought by Gordon in the Court of Session. The Lord Alva Ordinary, after some procedure, "repelled the reasons of reduction, and assoilzied the defender."

And to this interlocutor the Court adhered, upon advising a petition and answers.

Lord Ordinary, *Alva.*

Actor, *Crosbie.*

Act. *Ilay Campbell.*

*J. W.*

1804. March 7. COLQUHOUN against COLQUHOUN.

No. 5.

A husband having required his wife to leave his house, without assigning any reason, the Court refused to interpose by an interdict, to keep her in possession.

A bill of suspension and interdict was presented by Dame Mary Falconer, wife of Sir James Colquhoun of Luss, Baronet, complaining that she had been ordered to quit her husband's house in Edinburgh, and repair to another house which had been provided for her reception, and praying for an interdict to prevent her husband from turning her out of his family.

The Lord Ordinary appointed the case to be stated to the Court in memorials; and as the question seemed to be of general importance, the Judges delivered their opinions at great length on the subject. In support of the application, it was observed,—

Every contract affords mutual rights and mutual obligations. A husband, by marriage, acquires certain rights, but at the same time comes under corresponding obligations, and he cannot avail himself of the one without submitting to the other. A woman, by entering into the contract of marriage, leaves her own family, gives up her person, surrenders her fortune, and reduces herself to the situation of a minor. She comes under an obligation to follow the