

DIVISION III.

Mutual Duties betwixt Husband and Wife.

SECT. I.

Husband bound to aliment and provide for his Wife.

1561. March 26. and Feb. 26.

BARBARA LOGAN against ROGER WOOD, and AGNES CRICHTON against
MR ALEXANDER ABERCROMBIE.

No 91.

GIF ane man puttis away his wife out of his house and companie, for any crime or fault alledgit committit be hir, he aucht and sould sustene hir conforme to her estate, fra the day in the quhilk he put hir away, unto the day of the reconciliatioun, or then of the final sentence of divorce.

Fol. Dic. v. i. p. 392. Balfour, p. 95.

1579. March 23.

LADY LENOX against LORD LOVAT.

THE Lady Lenox, the spouse of Jamquhile the Lord Lovat, and daughter to the Earl of Athole, pursued her husband before the Commissaries of Edinburgh, for separation and divorcement, because of his inability and frigidity, so that he was not able to have carnal dealings with her; *et pendente lite coram commissariis*, she meaned her by supplication before the Lords, and desired her expenses to be modified to her in the mean time, and her sustentation off my Lord her husband. It was first *alleged*, that the Lords were not judges competent, because the principal cause of divorcement being intented before the Commissaries, the accessory of the expenses ought to be decreeted before the same Judges, *quia accessorium sequitur naturam principalis*. The whole allegiance was repelled by the Lords, because they had found them Judges in sundry causes. Then it was *alleged*, that the Lady should have no expenses, because she was the pursuer before the Commissaries, and my Lord offered to receive her as a wife, and adhere unto her; and offered him to prove the contrary of her summons, that he was potent and able, *et sic*

No 92.
During the dependence of a process of divorce for impotency, altho' the pursuit was at the wife's instance, and the husband offered to receive her home, the Lords found aliment due to her by her husband.

- No 92. *causa fuit ex parte mulieris.* To this was *answered, quod super pendente lite,* she ought to have her expenses off him, *quia de jure Scotiae, maritus est dominus omnium bonorum,* and unto the time the sentence of divorcement was given, she could have nothing by him.—THE LORDS pronounced by interlocutor, that *pendente lite,* she ought to have her expenses, and so modified to her, *per modum provisionis,* the sum of L. 400 to live upon.

Fol. Dic. v. 1. p. 392. Colvil, MS. p. 282.

- No 93. 1613. June 8. CLEMENT RUSSEL *against* THE EARL OF ARGYLE.

IN an action betwixt Clement Russel as donatar to the escheat of Robert Erskine against the Earl of Argyle, the Lords sustained a bond made by Dame ——— Douglas, spouse to my Lord Argyle, containing ——— merks to the said Robert Erskine, notwithstanding the bond was borrowed, and not subscribed by my Lord, and that because her Ladyship was *illustris persona*; and it was offered to be proved my Lord was out of the country the time of the making of the bond.

It was *alleged,* That the Lords decided otherwise against the La. Holyrood-house, viz. they found her own bond sufficient against herself, and not against my Lords heirs.

Fol. Dic. v. 1. p. 392. Kerse, MS. fol. 64.

- No 94. 1672. July 10. NEILSON *against* GUTHRIE and GAIRN.

A husband found liable for clothes bought by his wife after proclamation of banns.

ALEXANDER NEILSON pursues Barbara Guthrie and Mr William Gairn, her husband, and Captain Guthrie, her father, for an account of L. 500 for her wedding-clothes, taken off in his shop. It was *alleged* for the said Barbara, That she was minor, and the furniture was taken off, not only without her father's consent, but contrary thereto, for he did prohibit it, and so being done without consent of her father as curator, or lawful administrator, her obligation was null. It was *alleged* for the father *absolvitor,* because he had expressly prohibited the merchant to give off this ware, and there was nothing to oblige him to furnish wedding-clothes to his daughter, but that he might appoint her to be married in the clothes she had, if he thought fit. It was *alleged* for the husband, That he could not be liable, neither having promised, nor yet been liable for the debt of his wife, which was contracted after proclamation. The pursuer *answered,* That he offered to prove that the said Barbara was major, and that he did not found upon the father's promise, but that the father having consented to the marriage, and subscribed the contract, was thereby obliged to solemnize the marriage, and to furnish his daughter clothes according to her quality, being a part of his natural obligation: Likeas, the husband was obliged *de in rem verso,* because his wife be-