

proved to have had other clothes, if she had not been furnished with these. — The Lords found the wife liable, if she was major; but found the father not liable, seeing he prohibited it; but found the husband liable however *de in rem verso*. See RECOMPENCE.

Fol. Dic. v. 1. p. 393. Stair, v. 2. p. 98.

No 94.

1675. June 23. WIDOW AUCCINLECK against EARL OF MONTEITH.

IN a pursuit at the widow's instance against the Earl for payment of a hundred and seventy seven pounds, as the price of a parcel of stuff and furniture, sold to his Lady for her abulziements, it was *alleged* for the Earl, that before that furniture was gotten off, he had served inhibition against the Lady, which was registered and made public, after which she was not capable to contract debt. It was *replied*, that the sum craved being for merchandise and necessary abulziements, the Lady being in want, the inhibition could not affect the same, nor put the pursuer in *mala fide*, especially being for so small a sum. THE LORDS did ordain the pursuer to give her oath, if the inhibition was particularly intimated to her, which she denied; and thereafter, having advised this as a common cause, did find, that the Earl was not liable, he proving, that he furnished the Lady sufficiently with clothes and other abulziements.

Fol. Dic. v. 1. p. 393. Gosford, MS. No 760. p. 471.

No 95.

The husband is liable for goods taken off by his wife, even after inhibition, unless he can prove, that she was otherwise provided for.

1676. July 19. SANDS against EDMISTON.

ELIZABETH SANDS having pursued her husband, who deserted her and went abroad, for adherence, upon the act of Parliament, and the bishop having refused to excommunicate him for non-adherence, that by virtue of that act she might have divorce; she did therefore apply to the Council for an alimment, and got it locally out of certain tenements of her husband's, and now pursues for mails and duties. It was *alleged* for Mr Robert Edmiston, That he had adjudged the tenements in question, and was thereupon infest, and the act of Council could but import an assignation to the mails and duties, which ceased by an infestment, though posterior, which the LORDS found relevant.

Stair, v. 2. p. 455.

No 96.

1676. July 25. CAMPBELL against The LAIRD of EBDEN.

LILLIAS CAMPBELL pursues the Laird of Ebden for payment of an account of ware taken off by his Lady, acknowledged by her ticket under her hand, sub-

No 97.

Found in conformity with No 95. *supra*.

No 97. scribed with her hand, subjoined to the count. The defender *alleged*, That the subscription wants witnesses, and therefore at least the receiving of the goods must be proved by witnesses. *2do*, That his Lady was inhibited before this account, and thereby the lieges to contract with her. It was *answered*, That merchants are not obliged to look registers for inhibitions. *2do*, That the furniture was competent for a person of the Lady's quality, and therefore must be understood to be necessary, unless the husband prove that his Lady was otherwise competently provided, as was found in the case of the Earl of Montheth, No 95. p. 5879. though his Lady doth not cohabit with him.

Which the LORDS sustained.

Fol. Dic. v. 1. p. 392. Stair, v. 2. p. 458.

* * * Gosford reports the same case :

THERE being an action before the Bailies of Edinburgh, at the instance of the said Lillias and Robert Brown, her assignee, against the Lady Abden and her spouse, for his interest, for payment of L. 352, conform to her ticket, subscribed by her at the foot of a merchant account, for merchant ware taken up by her, which was advocated of consent; it was *alleged* for the Lady's husband, that he could not be decerned to make payment, *first*, because he offered to prove she was sufficiently provided *aliunde* in cloaths or other necessaries that she would stand in need of; *2do*, That he had served inhibition against her before the taking on of the said debt and account; *3tio*, That the ticket being subscribed by the wife only, without his consent, or witnesses, was not binding against them, unless it were proved by witnesses, that the whole particulars were delivered. It was *replied* to the *first*, That a merchant account confessed to be only for abuilziements and necessaries suitable to the quality of a wife, was binding against the husband, seeing merchants cannot know that they are otherwise provided; and if it were otherwise found, it would obstruct all trade and commerce. It was *answered* to the *second*, That inhibitions cannot be extended to debar merchants to furnish ware and abuilziements to wives. And to the *third* it was *answered*, That merchants accounts are privileged as to the probation, and need not those solemnities requisite in bonds for borrowed money, seeing their count books being subscribed by the party receiver, are obligatory in law without witnesses, both against the subscribers and their heirs, and against the husbands, who are liable *jure mariti* for their entertainment. THE LORDS did find the subscribed ticket obligatory against the husband, unless he would offer to prove that the wife was publicly inhibited at the market cross where the merchant lived, and that she was *aliunde* sufficiently provided with all necessaries; upon that reason, that without inhibition it was impossible they could know her condition, and so the trust of merchants would be in hazard; and that albeit they were inhibited, yet if

they were not sufficiently provided *aliunde*, the husband had no damage, being bound in law to provide them; but it being proved that they were inhibited and provided, they found that the husband could not be liable; and that being not proved, they found that the ticket subscribed without solemnities was obligatory against the husband, seeing merchants who keep shops are not supposed to have witnesses who know that the particulars were delivered, which often is done by themselves only, having no servant present, and many times but women servants, or one at the most.

Gosford MS. p. 565. No. 884.

No 97.

1696. June 24. JOHN HENDERSON against JAMES LAFREIS.

LAUDERDALE reported John Henderson, merchant, against James Lafreis, writer; for payment of a sum contained in his bond. The reasons of suspension and reduction being coincident, were, that he was minor, and lesed, it being for merchant ware, not taken off for himself, (except a very few articles,) but for his wife's marriage cloaths, which Mr James Caithness, her father, ought to have paid. *Answered*, It was *in rem versum* to the minor, who was past twenty, and the court being no way exorbitant, and the furnishing being to his wife, and the bond granted since his marriage, he can no ways pretend to be lesed; for though her father should have paid her wedding cloaths, yet the charger would not have trusted him for a sixpence, he being then in prison for debt; and such furnishing to minors has been sustained, as appears by Dury, 5th Feb. 1631, *Inglis contra Sharp, voce MINOR*. THE LORDS repelled the reason, and found him liable, even for what was furnished to his wife, because being a moveable debt, *jure mariti* it became his, especially the bond being after the marriage. See the 10th of July 1672, *Neilson contra Guthrie*, No. 94. p. 5878.

No 98.

A minor found liable for his wife's wedding cloaths, bought by himself.

1697. Nov. 11.—JOHN HENDERSON having charged James Lafreis writer, (as mentioned June 24. 1696), for payment of the sum of contained in his bond; his reason of suspension and reduction was, minority and lesion. *Answered*, *In rem versum*, being for your marriage cloaths. *Replied*, The account is likewise made up of sundry articles furnished to his wife before the marriage, and to Mr James Caithness, her father. THE LORDS found *quoad* what was given off to her father, he was lesed, and ought to be reponed against the same; but what was given to his wife, though prior to the marriage, yet would fall *sub communiōe bonorum mobilium*, and make him liable *jure mariti*, unless they had followed her father's faith in the furnishing. See July 10. 1672, *Neilson contra Guthrie*, No. 94. p. 5878. Then the charger *alleged*, That Lafreis being a writer and attendant about the Session the time he gave