

No 18.

The like happens every day, where one suspends because he is charged for more than is due; if, when the suspension comes to be discust, he only plead that reason, he is safe; but if he pleads other reasons and fails, he may be subjected to expense, notwithstanding his having been charged for more than was due.

*Fel. Dic. v. 3. p. 199. Kilkerran, (REPARATION.) No 3. p. 484.*

1762. November 18.

AGENT for MRS M'ALISTER of Loup, *against* Her HUSBAND.

No 19.

A husband is liable for expense of successful declarator of marriage against himself. Special costs given in such case do not bar the wife's agent from recovering the whole money laid out by him.

ANGUS M'ALISTER of Loup having denied his marriage with Jean M'Donald she brought a declarator thereof. The Commissaries decerned in her favour, with L. 80 of costs; and the House of Lords affirmed the decree with L. 100 costs.

Colquhoun Grant, her agent, having expended L. 104 over and above these two sums, in the necessary conduct of the cause, brought an action for repayment against Mr M'Alister, as liable for his wife's necessary and just debts.

*Objected* for Mr M'Alister, *1mo*, He cannot be liable for a debt contracted against his consent, and in prosecuting himself; *2do*, The costs given by the Commissaries and House of Lords are taxative, and exclude higher costs.

*Answered* to the last for Mr Grant; He does not ask repayment on the footing of costs, but on the footing of money necessarily expended for a wife, and for which, as such, the husband is liable.

'THE LORDS found Mr M'Alister liable.'

Act. *Lockhart, J. Dalrymple.*

Alt. *Jo. Campbell, Ferguson.*

J. M.

*Fel. Dic. v. 3. p. 199. Fac. Col. No 97. p. 219.*

1763. June 21.

CHRISTIAN SEVERINE BALLE, and JOHN MATTHIAS BRINK, *against* ROBERT BENTON Merchant in Newcastle, and ANDREW FOWLER and ALEXANDER CUSHNIE, Merchants in Aberdeen.

No 20.

The original owner having arrested a ship that had been taken by the enemy, and sold to the subject of a neutral state, and having been cast in

THE ship the John and Robert of Newcastle, having been taken by a French privateer, was carried into Christiansands in Norway, where, after a dispute with regard to the legality of the seizure, the captor was allowed to dispose of her, and sold her at a public roup to Christian Severine Balle merchant in Christiansands, who gave her a new name, and sent her upon a voyage to Aberdeen, under the command of John Matthias Brink.