

No 99.

THE LORDS found the bond null, but found the libel relevant for repetition of the sums advanced, in so far as the same was necessary.

Forbes, p. 529.

No 100.

1744. July 25. COUNTESS OF CAITHNESS *against* The EARL.

THE Countess of Caithness pursued the Earl her husband for an aliment. *Answered* by the Earl, That if she would return to her family he was willing to aliment her; but as there was no separation *a mensa et thoro*, she could not claim a separate aliment. THE LORDS found the claim incompetent *in hoc statu*. See APPENDIX.

Fol. Dic. v. 3. p. 281.

No 101.

1756. January 25. CRAMOND *against* ALLAN.

MARJORY CRAMOND pursued her husband for an interim aliment, while she pursued a separation on the head of maltreatment. *Answered* for the husband, *imo*, That she was a drunkard and a frequenter of bawdy-houses; and, *2do*, that he was willing to receive her home. THE LORDS decerned an interim aliment to her for carrying on her process. See APPENDIX.

Fol. Dic. v. 3. p. 282.

1780. December 12.

SAMUEL MITCHELSON, senior, Writer to the Signet, *against* SOPHIA, LADY CRANSTON, and MICHAEL LADE, Esq; her Husband.

No 102.

Money advanced for aliment of a family, for which a voucher is taken from the husband, becomes the husband's debt, and the creditor has no claim against the wife, altho' she succeed to a separate estate.

LORD CRANSTON had a considerable estate, both in England and Scotland, and his Lady, after her marriage, succeeded to an estate in the West Indies, which had belonged to her father, and to the liferent of which she was entitled; but, after this succession opened to Lady Cranston, Lord Cranston's affairs became so much involved, that his Creditors brought a judicial sale of his Scots estates.

During the dependence of the sale, Lord Cranston was much pinched for money; his family resided then in Edinburgh; and Mr Mitchelson, from time to time, advanced sundry sums for the use and aliment of the family; for which, on settling accounts with Lord Cranston, in May 1771, he took his Lordship's bill.

The price at which Lord Cranston's Scots estates sold fell short of paying the debts preferably secured upon them. The English estate was so settled, as

that it could not be attached for Mr Mitchelson's debt; and Lord Cranston having died, Mr Mitchelson brought an action against Lady Cranston, and Mr Lade, to whom her Ladyship was married after Lord Cranston's death, concluding for payment of the sum in Lord Cranston's bill, as being advanced on the credit of the Lady, and applied for the maintenance of her family. No 102.

Pleaded for Lady Cranston and her husband; Mr Mitchelson's taking Lord Cranston's bill shows he considered this as Lord Cranston's debt; which it clearly was, as every husband is bound to aliment his family. Such debts cannot affect the wife, as wives are not liable for their husbands' debts. Lady Cranston had no separate estate at the time these sums were advanced; therefore the pursuer must be presumed to have made the advances on the credit of Lord Cranston, and he can only affect his estate for the same.

Answered for the pursuer; He was not Lord Cranston's man of business, but was employed by Lady Cranston to look after her interest, while Lord Cranston's affairs were in confusion. It was on Lady Cranston's credit he made these advances, by which the debt in question was contracted; for, although Lady Cranston had not got possession of the West India estate at the time these advances were made, yet it was then certain she must succeed to it; as, in fact, soon after, she did; and it was on the faith of Lady Cranston's re-paying the money that it was advanced. Sundry letters of Lady Cranston's were produced, to show that this was the case; and that, even after the bill had been granted by Lord Cranston, Lady Cranston had promised to pay the debt.

Replied for the defenders; The letters founded on by the pursuer were imputed from Lady Cranston by her husband Lord Cranston. They infer no obligation on Lady Cranston; nor could do so, even if a promise had thereby been made to pay the debt, as a woman clothed with a husband can come under no valid obligation to pay the husband's debts.

Both parties quoted sundry authorities, in support of their different pleas.

THE LORD ORDINARY found, 'That the debt pursued on was the proper debt of the late Lord Cranston, and that the defender, his widow, is not legally bound to pay the same; therefore sustained the defences, and assoilzied.'

The pursuer reclaimed to the Court; and, on advising his petition, with the answers, 'the LORDS adhered.'

Act. *John Swinton, David Ross.*

Alt. *Alex. Elphinston.*

Clerk, *Tait.*

Fol. Dic. v. 3. p. 286. Fac. Col. No 9. p. 17.

1785. November 22.

JEAN LISK, and her *Curator ad litem*, against Her HUSBAND and his CREDITORS.

JEAN LISK was the widow of a gentleman, at whose death she became entitled to a terce out of his lands, amounting to L. 600 yearly.

No 103.
An aliment found due to a wife out of the produce