

No 149.

THE LORDS assoilzied the defender.

A reclaiming petition was (4th July) refused, without answers.

Lord Ordinary, Swinton.

Act. Geo. Fergusson, Jo. Dickson.

Alt. G. J. Bell.

Clerk, Menzies.

D. D.

*Fac. Col. No 36. p. 82.*

## DIVISION V.

**A married woman's deeds in what cases effectual against herself, the husband consenting or not consenting.**

## S E C T. I.

**Furnishings to a wife whom her husband is bound to aliment.**

1610. *July 6,* EUSTACHIUS'S WIFE *against* LADY HALYRUIDHOUS.

No 150.

A WOMAN marrying receiving furnishing from a stranger and giving her bond to pay it, the same not being subscribed by the husband, if after his decease, the wife be pursued upon her bond, the LORDS will sustain action for so much as the defender, being sworn, shall grant her to have received, whereof she will not get relief against her husband's heir or executor, except for that which has been converted to their use.

*Fol. Dic. v. 1. p. 397. Haddington, MS. No 1944.*

No 151.

A wife was found not liable for money furnished to her for her aliment in her great necessity, tho' it was advanced upon her own credit.

1629. *December 21.* MR DAVID AITON *against* L. HALKERTON.

THE Laird of Halkerton consigning a sum modified to his wife for her entertainment, which was claimed by the said Mr David, as arrested for satisfaction of a debt of 300 merks owing to him by the Lady, conform to her bond, and which sum he alleged he had furnished to her for her aliment in her great necessity, and which he referred to her oath; and she *contending*, That that sum was in law due to be paid by her husband, who in law was bound to entertain

her, and that a bond made by her, having an husband, was null wanting his consent, and could not be obligatory against her; and the other *answering*, That he had no action upon that bond against the husband, not being made by him, neither could he prove that the money was furnished for his wife's use, because that probation which in law is good against herself, viz. her oath, is not relevant, and will not be admitted to prove against him, and he has no other probation; and so he cannot prevail against the husband, whereas she may prevail against him in pursuing him for her entertainment; for she wanting the same, and not being furnished by her husband, the Judge in law will modify and decern the husband to pay; and albeit he might quarrel the bond for want of his consent and subscription, yet it is not proper to allege and oppone her own deed for a sum, so profitably converted to her use; notwithstanding whereof the Lords ordained the wife to be answered of the money consigned, and found that the creditor upon that bond could not pursue the Lady, until he had pursued the husband, and after the discussing of the husband, they would find what was due to be done to the creditor by either of them, and in the next time found no process against the wife upon the foresaid bond.

Act. Aiton.

Alt. Lermouth &amp; Gilmour.

Clerk, Gibson.

*Fol. Dic. v. 1. p. 397. Durie, p. 477.*

1630. March 12. SCUGALL against DOUGLASS.

ALEXANDER SCUGALL having recovered decret against Alexander Douglass and Margaret Inglis his spouse, for the sum of L. 28, for the price of wares confessed to be received by her upon her oath, being referred thereto, and also her husband holden as confest thereon; and she being charged to pay after her husband's decease, and suspending, the Lords found, that that decret, albeit given against herself, and for gear confest to be received by herself, and albeit the sum was so small, yet being recovered against her and her husband, and she having a husband at the receipt of the goods, ought to be executed against her husband's heirs and executors, and not against herself, and therefore suspended the charges against her.

No 152.

Clerk, Gibson.

*Fol. Dic. v. 1. p. 397. Durie, p. 506.*

\* \* Spottiswood reports the same case :

JOHN SCUGALL having pursued Alexander Douglass macer, and his wife, Margaret Inglis, for L. 60 owing by them to Patrick Craig, to which he had right as donatar to Patrick's escheat, referred the truth of the debt to their oaths; Alexander was holden as confest, and his wife by her oath granted them