

cease, she suspended upon this ground, That the note was null, as being granted *stante matrimonio*, and then married a second time ; and the charger having referred to her oath, that the debt was contracted before her first marriage, the present husband contended she could not swear to affect him, but only herself and her executors after his death.

No 214.

*Answered* for the charger ; That the matter was litigious before the last marriage, and the charger could no more be prejudged by the wife's posterior marriage than by a posterior assignation ; although the suspension was not insisted in, nor the wife's oath craved before the second marriage.

THE LORDS inclined to find, that the wife could not swear in prejudice of her husband, who might be ignorant of the debt or suspension. But it came not to a vote ; and the contrary seems more just.

*Harcarse*, (STANTE MATRIMONIO.) No 869. p. 246.

1682. November. JAMES ALSTON *against* PHILIP and SIR JAMES STAMFILDS.

No 215.

FOUND that a husband after dissolution of the marriage, was liable for accounts taken off by the wife during the marriage, though without his order, and though she was competently furnished *aliunde* ; but found the husband's father not liable for them, though the son and wife remained in his family, in respect he, the father, had been at considerable charges upon them *aliunde*, suitable to their quality. *See RECOMPENCE.*

*Fol. Dic. v. I. p. 403. Harcarse*, (STANTE MATRIMONIO.) No 871. p. 247.

\* \* \* Sir P. Home reports the same case :

JAMES ALSTON merchant in Edinburgh, having pursued Philip Stanfield and Sir James Stanfield of Newmilns, his father, for payment of Philip Stanfield's wife's bridal cloaths, who was daughter to Major Biggar of Wolmet, and others furnished to her during the marriage ; *alleged* for Philip, That he could not be liable, the marriage being now dissolved by decease of the said

Biggar his wife ; but her father's representatives are only liable for the same, especially seeing he received no tocher with her. And it was *alleged* for Sir James the father, That he could not be liable, because he was out of the country the time of the marriage, which was made without his knowledge or consent ; so that albeit he was obliged to aliment his son, yet he was not obliged to furnish his wife with bridal cloaths, or others during the marriage, especially seeing he had paid above 5000 merks to his own merchants upon their account ; and seeing the pursuer was not his ordinary merchant, he ought not to have furnished his son or his wife with any cloaths without his warrant. *Answered*, that Philip ought to be liable as husband, who was obliged to ali-

No 215.

ment and furnish his wife cloaths, albeit he had got no portion with her, and both before and since her decease he has letters in which he had promised payment of the accompt; as also Sir James his father did treat with the pursuer anent the payment of the accompt, and desired him to delay it for some time, *Replied*, That the letters cannot oblige Philip, because the same were written by him when he was minor, to his lesion, seeing he was not obliged to furnish the cloaths nor to pay the accompt, the marriage being dissolved; as also, he wrote the same only *pro interesse* as husband, and that the marriage being dissolved, he is not farther liable; just as if a factor should promise to pay his constituent's debt, yet if he be immediately discharged of his employment, he will not be liable for the debt *nisi intus habet*, it being always presumed that he made the promise *rebus sic stantibus*; and as to Sir James the father, albeit he treated anent the payment of the accompt, yet he never promised him payment.—THE LORDS found it relevant to assoilzie Sir James the father, that he had sufficiently furnished his son and his daughter-in-law suitable to their rank and quality by his own merchants, in so far as he had paid 5000 merks of merchant accompts for them, which they had taken on the time of the marriage.

*Sir P. Home, MS. v. 1. No 260. p. 364.*

\*.\* This case is also reported by Fountainhall:

JAMES ALSTON merchant in Edinburgh, against Sir James Stanfield and Philip his son, for L. 1,100 Scots of cloaths taken off by himself and his wife in two years time. The ground he insisted on against Sir James the father was, because though the son was major, and married the time of the furnishing, yet he and his lady were *in familia* with Sir James, and the son had no estate *aliunde* to be affected; and so the father was bound to clothe and aliment them. THE LORDS, on Forret's report, decerned against Philip; but assoilzied the father, because he made it appear that he had paid 5,000 merks of debts contracted by him during that very space, and that his son was a prodigal waster. Though we have not amongst us the *S. C. Macedonianum*, prohibiting the lending of money to sons *in familia*.

*Fountainhall, v. 1. p. 196.*

1745. June 19.

HELEN BEE against The EXECUTORS of ELISABETH WALLACE.

No 216.

A relict continuing her husband's management after his death, with-

JOHN WALLACE possesseth the Lands of Sheriff-hall, by a tack from the Dutchess of Buccleugh, which was to become void on her death, unless he should be confirmed in his possession by the Earl of Dalkeith, or other heirs in the estate.