

1710. November 18. ANNA RICHARDSON *against* JAMES COLVIL, her Husband.

MISTRESS Anna Richardson, daughter to Sir J. Richardson of Smeiton, having married Mr James Colvil, and disposed to him a good jointure she had from a former husband; and he having dilapidated his fortune, and diverted (which the English law calls eloping) from her, she is forced to pursue him for having an aliment modified to her and her family.

ALLEGED,—There can be no separate aliment; in regard I am willing to take you home, and maintain you as my wife, conform to my ability and your quality.

This defence the Lords sustained; in regard, though she alleged inhumanity and maltreatment, yet she had not proven the same, but only that he was a spendthrift.

After several months' expectation, she, finding no performance, gave in a bill to the Lords, bearing, that a husband's bare offer of receiving back and entertaining his wife was not relevant against a process of aliment, unless *bona fide* performed; otherwise the most austere and extravagant husbands will never fail to make that sham offer, if it can elide the process. And, therefore, seeing law presumes one who is *semel malus* always to continue and persist *in eodem genere malitiæ*, and he having emptied her former dwelling-house by selling the plenishing, his general offer now cannot be regarded, unless he find caution to allow a necessary and competent provision for maintaining herself and family in time coming. To show it is elusory, he has never offered to fulfil; and thus he has treated her these four years back, wherein she has been necessitated to contract debt; none living, like cameleons, upon the air: therefore her modification must not only be *pro futuro*, but also for by-gones to pay her creditors.

This being ordained to be answered, and he absconding that he might not be cited; the Lords ordained him to assign a domicile competently furnished and provided, and not blind alehouses, where he used to lurk: and, failing thereof, appointed her to condescend on a fund and estate out of which they might modify to her a suitable aliment corresponding to his fortune; with certification, if he did not condescend on his house, they would proceed to modification against him.

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1710. November 23. WILLIAM HAMILTON of WISHAW *against* GAVIN MOIR, Cairnhill's Heir.

WILLIAM Hamilton of Wishaw and Gavin Moir of Cairnhill being both creditors on the estate of Cleland of Faskine, they enter into articles of agreement containing mutual prestations on either party, which are drawn up upon a half-sheet of paper, Cairnhill's part being wrote on the first page of that paper, and Wishaw's part on the other side of the page, on the back of it. Wishaw having suffered it to lie over near 25 years, and Cairnhill being dead, he pursues his heir for implement; who objects that the articles pursued on are null as to him, in so far as his father's part of the articles contained in the first page wants the designation of the writer's name and witnesses: and, though Wishaw's part on the other side bears them, yet that can never integrate the defect in the first part, they being quite distinct writs.