

ly 400 merks, in case they should divert and live separately. A total breach happening after this reconciliation, so as there was no likelihood of their longer correspondence as man and wife: The Lords, upon her application, modified to her a yearly aliment of 300 merks, in money and victual, for which she extracted a decret. But in respect the same was less than the provision in the bond, she thought fit to charge her husband to implement his bond; who suspended upon the reasons following: 1. The charge at the instance of a wife against her husband, without the authority of a judge, is intrinsically null. 2. The bond is null, as being granted *contra bonos mores*, in the view of separation to happen, the Lord knows when; and more odious than *pacta de hæreditate viventis*, which are reprobated in law. 3. Such a bond granted to the wife for sums payable *stante matrimonio*, both recurred to the husband himself, *jure mariti*; and is revocable, as a donation.

ANSWERED for the charger,—Bonds for aliment, either in case of decease, or separation, *ne maritus in uxorem seivret*, are onerous; and not like gratuitous deeds, which are revocable, *ne conjuges mutuo amore se spolient*. And where the ground of separation is found just, by sentence of a judge, (as in this case,) the marriage is effectually dissolved, as to all the legal consequences during the separation; for no debt contracted by her in the separate state can affect him; nor would the administration, or profits of any estate, falling to her by succession, come under the *jus mariti*. So that the bond of aliment, granted in the view of a separation which hath happened, can no more be now revoked, than if the husband were actually dead.

REPLIED for the suspender,—What is necessary for the charger's aliment, is already cognosced and determined according to the suspender's fortune; and the excess charged for being *sine causa*, recurs to him, and is revocable.

The Lords suspended the letters *simpliciter*.

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1710. *January 19.* MR. JOHN DICKSON, Clerk to the Justices of Peace of Berwickshire, *against* MR. JOHN HUME, Advocate.

The Justices of Peace of Berwickshire, having set a fine of L.50. Sterling, upon Mr. John Hume, for which he was put to give bond to Mr. John Dickson their clerk: Mr. Hume, when charged upon the bond, suspended, and raised reduction of the sentence. At discussing the suspension, the Lords restricted the fine, as exorbitant, to L.30. Sterling; and found the letters orderly proceeded, for the restricted sum.