

the Lords have also found in a parallel case betwixt the Laird of West-Nisbet and the Laird of Moriston, 27th March 1627, *voce* PERSONAL and TRANSMISSIBLE.

No 364.

THE LORDS repelled the objections against the charger's title, and found my Lady Kinnaird hath right to all annuities due, preceding the revocation by my Lord, and until the same was founded upon, the sums now charged for being appropriated for an aliment to my Lady; and found the revocation could not exclude her Ladyship, in so far as concerns a suitable aliment, since it was made use of, and in time coming, during their separate abode.

Act. Arch. Ogilvy.

Alt. Ro. Dundas.

Clerk, Mackenzie.

Fol. Dic. v. 1. p. 412. Bruce, No 62. p. 75.

1757. *January 4.* MARJORY CRAMOND *against* ROBERT ALLAN.

No 365.

ROBERT ALLAN and Marjory Cramond, spouses, having lived for some years in very bad terms, agreed at last to a separation, which was executed, at the sight of the friends of both parties, by a writing, in which he obliged himself to pay her, of separate aliment, L. 5 yearly, during their joint lives; which was about one-sixth of his free estate; and she obliged herself to renounce all farther claim of aliment or separate maintenance.

Agreement settling the amount of a separate maintenance, revocable by the wife.

She received this separate maintenance for five years; but, at the end of that term, sued her husband for a higher separate maintenance; *pleading*, That she might revoke the former agreement as a bargain betwixt husband and wife.

Answered, The reason on which donations *inter virum et uxorem* are revocable, is, *Ne mutuo amore se spolient*; but here was no donation of that kind, nor any fear of that consequence; and the agreement was a settlement consented to by the wife's friends, and acquiesced in by her for five years.

' THE LORDS found the agreement revocable.'

Act. Rae, Lockhart.

Alt. J. Dalrymple, Craigie.

J. D.

Fol. Dic. v. 3. p. 288. Fac. Col. No 5. p. 7.

1797. *November 28.* CATHARINE LAWSON *against* DAVID MACCULLOCH.

DAVID MACCULLOCH and Catharine Lawson, his wife, in May 1795, entered into a voluntary contract of separation, by which he became bound to pay her an annuity of L. 30, which she accepted of, in full of aliment, terce, and every legal claim which might arise to her, either during her husband's life, or at his death.

The parties were afterwards reconciled, and in December 1795, they entered into a postnuptial contract of marriage, by which Mrs Macculloch was provided in a jointure of L. 30 yearly.

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A voluntary contract of separation, by which a wife accepted an annuity from her husband, in full of every legal claim, found not to bar

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an action at her instance for a separation *a mensa et thoro*, on account of bad usage, and for a larger annuity, although she had for some time accepted the one fixed by the voluntary contract, which was equal to the jointure provided to her in a post-nuptial contract of marriage.

In consequence of a subsequent disagreement, they again parted. The former contract of separation was, in March 1796, ratified by the wife, with consent of one of her nearest relations, and she thereafter accepted of two different payments, of L. 15 and L. 20 of the annuity thereby provided to her.

Afterwards, in June 1797, she brought an action against her husband, before the Commissaries of Edinburgh, concluding for a separation *a mensa et thoro*, on account of harsh usage, and likewise for an aliment of L. 200 yearly.

Mr Macculloch contended, That the action was barred by the voluntary contract of separation, and postnuptial contract of marriage. By the former, he observed, she had renounced every claim against him, in consideration of her annuity; and it was a deed, binding on both parties, especially as she alleged bad usage, which was a legal ground for a separation; Erskine, b. 1. tit. 6. § 30. And as her jointure, after his death, was fixed at L. 30, it is unreasonable that a larger allowance should be given her during his life.

The Commissaries repelled the defences, 'in so far as founded upon alleged private transactions between the parties; and before further answer, allowed the pursuer a proof of the facts stated in her libel.'

THE LORD ORDINARY on the bills refused a bill of advocacy for Mr Macculloch, complaining of this judgment; and a reclaiming petition against his Lordship's interlocutor was unanimously refused, without answers.

Lord Ordinary, *Craig*.

For the Petitioner, *Montgomery*.

R. D.

Fac. Col. No 44. p. 103.

S E C T. XII.

Contract of Separation upon a sufficient cause.

No 367.

Process sustained at the instance of a wife against her husband, upon a promise to pay her a yearly aliment, he having maltreated her, and cohabited with another woman.

1626. December 21. LADY FOULIS against Her HUSBAND.

IN an action pursued at the instance of the Lady Foulis against her husband, for payment of a yearly sum of money to her, for her sustentation, conform to his promise made thereupon, referred to his oath, this action at the wife's instance against her husband, was sustained, albeit there was no action of divorcement depending betwixt them; and albeit it was *alleged* by the defender, That the wife, *stante matrimonio*, could not be heard to pursue her own husband, who in all pursuits ought to authorise her; which allegiance was repelled in respect of the summons and action, which reported that he had diverted from her, and that he had married, and did cohabit with another wife, and that he being de-