

An alimentary Annuity provided to a Wife before her Marriage, was found to exclude the Husband's absolute Disposal thereof by his *ius mariti*; and the Diligence of his Creditors; and only to be employed for alimending him and her and their Family in Manner following viz: the Terms Annuity due before the Marriage, to satisfy the Wife's alimentary Debts anterior to the Marriage; and the bygone Terms Annuity since the Marriage, for paying alimentary Debts of the Family since the Marriage. Which Annuity in Time coming was ordained to be applied for Maintenance of the Family: the Husband always having the Administration and Application thereof, upon finding Caution to apply the same accordingly, and particularly to pay his Wife out of the first Part of the said Annuity yearly, a certain Sum for her Clothing; provided the Debts contracted for making the Life rent Annuity should be paid in the first Place off the whole Head of the preceding Annuities: 1 Decemb. 1709, Lady Penhull contra Dumbrie her Husband and his Creditors. But such an alimentary Provision having after the Wife's Separation from her Husband, been divided equally of Consent betwixt them by the Lords; the Half payable to the Husband was found not alimentary in his Person during the Separation 21 Decemb. 1711 Hutchefon contra Coats. And an Aliment provided to a Wife by a third Party for her Habilliments and bodily Ornament or other Uses excluding the *ius mariti*, was not found due to the Executors of the Wife: in Respect the same had been payed to the Husband and he had furnished all things necessary to the Wife, who had not used her Power of disposing 2. Feb. 1667 Executors of Lady Pillon contra Hay of Balhousie. The passive Effects of Marriage with Respect to the Husband, are 1<sup>o</sup> He is obliged to alimend his Wife and furnish her with all Things necessary for her Life, Health, and Ornament, according to his Means and Quality. *lib. 1. tit. 9. §. 10.* Because he is worse than an Infidel, that does not provide for his own Family 1. *Timoth. 5. c.* And if he hath no Means he is bound by the Tie of Nature to labour for an Aliment to his Wife. If a Husband refuse to alimend his Wife, the Lords of Session, or the Commissarys of Edinburgh, will modify an Aliment to her and what Things are necessary for her according to his Estate and Quality. But no Person is obliged to entertain and furnish his Wife, to live out of his own House. Because it is the Duty of a Wife to follow and live with her Husband. Thus a Lady having gone to London without her Husband's Approbation, he was not found liable for Furniture given to her without his Consent; except in so far as her ordinary Expences would have amounted to, had she stayed at Home, and she herself was answerable for the <sup>over plus</sup> out of her own Estate and Aliment, the falling to her after the Furniture was taken off 6 July 1677 Allan contra E. and Co of Southesk. Money being advanced for to a Wife for defraying the Charges of her journey to the Bath in England, advised by Physicians as necessary

sary for her Health: Action was sustained against the Husband for Repayment, only in so far as the same was necessary 19 July 1711 Lady Hinfains and others contra the Laird her Husband. Yet the Lords are in Use to grant Aliments to Wives living separately from their Husbands *à sevitiam*; because of cruel and inhumane Treatment. Thus a Husband who offered to alimend his Wife in Ireland where he dwelt, was ordained to alimend her in Scotland where his Fortune lay; in Respect he would not let her know in what particular Place of Ireland he resided, and furnish her with Money to defray the Expence of her journey to come to him 9 July 1712 Fea contra Grail her Husband. A Husband, after Inhibition served by him against his Wife, is not liable for any thing furnished to her, unless it be suitable to her Quality, and he cannot instruct, that he sufficiently provided her otherwise: 25 July 1676 Campbell contra L. Adam. It was thought hard by some of the Lords of Session, that a Merchant, after Inhibition at a Husband's Instance against his Wife, furnishing bona fide Ware to her, should be frustrated of his Payment upon Prohibition of an Inhibition served against her by the Husband; unless either the said Inhibition had been intimated to the Merchant, or that it were notoriously known that she was inhibited: seeing such Inhibitions are granted without any ground either of *Moril* as Bond or Contract, or of the Dependence of a Process, but only upon the Husband's Desire by Bill, *sine causa cognitione*: and thought it hard to oblige Merchants when Ladys come to their Shops for buying Goods, to go to Registers and try whether they be inhibited. But these Points were not decided 15 June 1675 Nuchen contra E. Monthlith observed by Dirlot. However in a former Case it was found, that a Husband having caused pay to his Lady yearly for several Years while he was abroad, a suitable Quantity of Money as might conveniently suffice to maintain her and the Family; he was found not liable to pay to the Furnishers of Bread, Flesh, Shoes &c. to the Lady and Family, except he had ordered them to do it, or known that they had furnished such things; and also that they were not paid by the Lady. Nor was it thought needfull to have been intimated to them, that the Husband had given a yearly Provision to her for Maintenance of herself and the Family, that they might have consulted their own Security; or to have discharged them to furnish: seeing they had no Warrant from the Husband to do it and could not have been compelled to furnish; for otherwise Wives or Servants might ruin their Husbands or Masters by investing the Money allowed for the Maintenance of his House, and applying it to any other unlawful Use. So that Furnishers ought only to rely for Security of their Payment upon those who ordered them to do it, and with whom they contract, or else take ready Money 21 June 1639 contra Hamilton. Process of Aliment at the Instance of a Woman against one as held and reputed her Husband, who denied her to be his Wife was stopped before the Lords, till the party's marriage