

was rebel, being charged to compare before the Secret Council, for insolencies committed against her, and not comparing to answer thereto, in end by the mediation of his friends she purchased protection to him, to come and treat for the settling controversies betwixt them, at which time the said promise was made to a mediate person, to her use, and for her sustentation, and the bairn procreated betwixt them; and also the same was made to herself, for the same cause: Which case being considered in these circumstances, and being a cause alimentary, and to the pursuer, who was a stranger, it was sustained by the Lords, and the allegiance was repelled.

Act. Russel.

Alt. Lantie.

Clerk, Gibson.

Fol. Dic. v. i. p. 413. Durie, p. 251.

No 367.

1734. November 29. HOME against LADY ECCLES.

THOUGH a contract *bona gratia* is ever revocable, a contract of separation, founded upon articles of maltreatment, sufficient for a legal separation, is not revocable; and therefore a separate aliment was sustained, though above a reasonable aliment, such as a Judge would have determined. See APPENDIX.

Fol. Dic. v. i. p. 413.

No 368.

DIVISION XI.

Marriage Dissolving within the Year, all things are
Restored *hinc inde*.

S E C T. I.

Terce.—Second Marriage.—Mourning.—Effect as to Postnuptial
Contracts.—Effect as to Liferent Provisions.

1600. January.

MAXWELL against GARLIES.

IN an action pursued by my Lady Maxwell, relief of the Laird of Garlies, against the Laird of Garlies and his curators, for the profit of the conjunct-fee

No 369.

No 369. lands, it was found, That he who married a widow, deceasing within year and day, his relict should have no conjunct-fee, nor terce of his lands.

Fol. Dic. v. 1. p. 413. Haddington, MS. No 638.

1634. July 23.

MAXWELL *against* HAIRSTAINES.

No 370.
Marriage having dissolved within year and day, all things are restored *hinc inde*, whether the husband or wife were formerly married or not.

THOMAS MAXWELL having married the relict of umquhile Matthew Hairstaines, in their contract of marriage she assigns to him and his heirs, the sum of 3000 merks of that 6000 merks which was addebted to her by John Hairstaines; after which marriage she dies within the year. There being no bairns procreated betwixt them, the said Thomas thereafter pursues the said John Hairstaines for payment of the 3000 merks, conform to the said contract; who *excepting*, That the pursuer had no right by virtue thereof to the said sum, in respect the wife, whose money it was, died within the year, there being no bairns born of that marriage; this exception was found relevant, albeit the pursuer *replied*, That this party had no interest to propone this allegiance, he being only debtor, who could be put *in tuto* by this sentence; and also *replied*, That this allegiance holds not where the wife, so deceasing within year and day, was a widow, as this pursuer's wife was; for albeit when a virgin married dies within the year, *omnia hinc inde restituuntur*, yet it is not so where the wife was married before. Which reply was repelled; for the defender was found to have sufficient interest to exclude the pursuer's right; and also it was found alike to infer restitution, whether the wife dying was a maid the time of her marriage or not; and sicklike in the husband, whether he had been married before, or that he had never been married before; but because the pursuer replied, that the only bairn of the defunct woman, and who would be extrix to her in law, and so have only interest to the sum acclaimed, concurred and assisted this pursuit, therefore the defender was ordained to allege farther.

Act. Gibson.

Alt. Cunningham.

Clerk, Gibson.

Fol. Dic. v. 1. p. 413. Durie, p. 732.

1682. November. The CHILDREN OF WALTER LAW *against* MR JOHN LIDDEL.

No 371.

A MAN having granted a bond of L. 1000 to his wife *stante matrimonio*, payable to her in case there were no children of the marriage, and the marriage having dissolved within the year, and a pursuit being raised upon the bond;

It was *alleged* for the defender; 1. That marriage dissolving within year and day, all provisions *intuitu matrimonii* are null, unless there be a clause dispensing with the dissolution. 2. The husband having intromitted with L. 1000 of