

sum, especially seeing this charger had furnished her for her aliment, as much as would exhaust a great part of this sum; and the husband compearing by his procurator, concurred with the suspender, and insisted in the reason with him. THE LORDS suspended the charges raised by Drummond upon his bond, and found the same, the sum therein contained, to pertain to the said husband, and that he had right thereto, and that the wife could not make any right thereof, nor insert any name in the bond to the husband's prejudice, the money being acknowledged to be hers; and found, that this voluntary separation betwixt man and wife, not being lawfully authorized by a legal and judicial sentence, ought not to be sustained, nor allowed; and therefore found, that no deeds depending thereon, whereby any monies were provided to her by her husband, ought to be effectual, but was altogether null, whenever it was drawn in question: And whereas it was *alleged* by the charger, that a great part of the money was applied for the wife's aliment; they found, that being condescended, and lawfully qualified, ought to be allowed *pro tanto*, to produce execution to the charger for the same.

Act. *Stuart.*

Alt.

Clerk, *Gibson.**Fol. Dic. v. I. p. 412. Durie, p. 702.*

1666. February 6.

LIVINGSTON *against* BEGG.

THOMAS BEGG having granted a bond to Livingston's wife, bearing, that in respect he thought it convenient that they should live apart, he obliged him to pay her a certain sum of money yearly for her aliment, and obliged him never to quarrel, or recal that obligation; being charger thereupon, he suspends on this reason, that it was *donatio inter virum et uxorem*, and so he might recal the same; and now offered to cohabit with his wife, and aliment her according to his means. It was *answered*, that he had renounced that privilege, in so far as he had obliged himself, never to recal, or come against this obligation. It was *answered*, that though he had expresly renounced that privilege, yet the renunciation was *donatio inter virum et uxorem*, and he might therefore recal, and come against both.

THE LORDS found the reason of suspension, and reply relevant in time coming; but not for the bygone time, during which, the wife had actually lived apart, and alimented herself.

Fol. Dic. v. I. p. 412. Stair, v. I. p. 348.

* * * Newbyth reports the same case:

THOMAS BEGG upon a narrative, that he did not find it convenient to keep table and diet with Elibabeth Begg his spouse, and that it was just she should be entertained, therefore he is obliged to pay her 250 merks yearly, during

No 361.

No 362.

A contract of separation *bona gratia*, found effectual till it was revoked, and therefore a separate aliment found to cease after revocation, but sustained as to by-gones.

No 362. her lifetime and his, for her aliment, whilk bond contains an assignation to Mr John, and Mr William Livingstons, for her behoof, to the duties therein contained; the bond being suspended upon this reason, that by the narrative, it appeared it was for aliment to his wife, and that he was most willing to aliment her with himself, it is *donatio inter virum et uxorem* and so revocable; to this it was answered, that the husband being major *sciens et prudens* cannot quarrel it, especially being expressly bound by the bond never to revoke the same. THE LORDS found the letters orderly proceeded for bygones and ay and while he should aliment his wife.

Newbyth, MS. p. 54.

. See Earl of Argyle against his Lady. No 263. p 6054.

No 363.

A contract of separation *bona gratia* found to be effectual till revoked, and when revoked all things are revoked in *statu quo*.

1713. February 12. FORBES against ABERNETHY.

ALEXANDER FORBES of Blacktoun entered into a contract of separation with Isobel Hacket his spouse, and John Abernethy her son of a first marriage, whereby the man and wife agreed to live separately. Alexander Forbes renounced in favours of the said Isobel Hacket, her heirs, executors and assignees, all right he had or could pretend to the jointure, provided to her by her first husband, and obliged him never to molest her in her person or goods, and thereby renounced his *jus mariti* as if he had never been married to her: Isobel Hacket renounced and discharged in his favours, all right or claim of right which she had or could pretend to his means or estate, by contract, *jure relictae*, or otherways, as if their marriage had never been. Both parties obliged themselves never to quarrel or revoke this deed; and John Abernethy took burden for, and obliged himself, conjunctly and severally with his mother for her performance of the premises. After the parties had thus separated *bona gratia*, Isobel Hacket agreed with John Abernethy her son to restrict her annuity of 600 merks, which he was obliged to pay her, to 300 merks. Many years after this, Alexander Forbes and Isobel Hacket thought fit to go together again, and pursued John Abernethy for payment of the full 600 merks of annuity for all years and terms bygone notwithstanding the contract and rights following thereupon.

THE LORDS found the Lady's agreement with Mayen her son during the standing of the contract of separation, restricting her jointure to 300 merks yearly, is binding from the date of that restriction; but found the restriction to fall with the contract, and the Lady and her husband to have right to her former jointure of 600 merks per annum, how soon the separation was by mutual consent past from, and the parties came to be reconciled and cohabit.