

SECT. II.

Suspension upon Performance of a negative Obligation.

1671. December 16. STEWART *against* WEILLINGS.

No. 23.

Archibald Stewart, brother to the Earl of Murray, having obtained a bond from Weillings, who is my Lady Murray's servant, to remove from her service, charges him to remove, upon the bond. He gave in a bill of suspension; and the Lords having appointed the cause to be heard upon the bill, the said Weillings alleged, that he had obeyed the charge, in so far as he had removed from the Lady's family, and left her service, and so craved the letters to be suspended *simpliciter*. It was answered, That the bond must be understood *cum effectu*, and no simulate elusory obedience can be sufficient, but Weillings must not only remove from the family, but must remove from all service that he was formerly accustomed to do to the Lady, which was the only intent and effect of the bond, in respect that it is known that the Lady, being melancholy and weak, hath been abused by this Weillings; and though she hath 20,000 merks by year of jointure, and lives most narrowly, yet all is spent, and she remains poor, and Weillings is become very rich; so that removing from being a domestic, or getting a fee, is not the just intent or effect of this bond, but forbearing to manage or meddle in the Lady's affairs. It was answered, That this bond was obtained *viis et modis*, and being strange and unaccustomed, by restraining the Lady's liberty, in using what servants she will, it ought not to be extended; but obedience being once given by removing, the bond ceases, and can have no further effect.

The Lords found, That the effect of the bond is to remove from the Lady's service, and from doing any such service to her as he was accustomed before; and that albeit obedience be given, the same is not to be suspended *simpliciter*, but ay and while he transgress the obligation thereof, by doing such service, and that he may be charged thereupon so oft as he transgresses: But found it could not import to hinder him of free access to the Lady to visit her.

Fol. Dic. v. 2. p. 415. Stair, v. 2. p. 26.