

No 261.

ther separation nor action of divorcement depending betwixt them, or intended by any of them against the other; and albeit they cohabited, and lived together as man and wife; and the said inhibition was found ought in reason to pass.

*Fol. Dic. v. 1. p. 406. Durie, p. 857.*

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1678. June 15.

A. against B.

No 262.

A WOMAN on a bill gets letters of horning and inhibition against her husband for her jointure, because he was turned hypochondriac, and dilapidating all, and that without naming a curator to her.

*Fol. Dic. v. 1. p. 406. Fountainhall, MS.*

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No 263.

A wife may use diligence against her husband for payment of a separate aliment, without being authorised by a curator.

1695. November 7. EARL of ARGYLE against His LADY.

SHE had charged him on a bond of aliment of 8000 merks *per annum*, during the time of their living separately. His reasons were, *imo*, It was deposited in the King's Advocate's hands, on terms. This being denied by my Lord Advocate, was past from. *2do*, That she had been factrix for several years for her Lord, and had not counted for her intromission. This not being a liquid compensation, was also past from. So the two reasons insisted on were; *imo*, That a wife could not summarily charge her husband, unless she were authorised by a curator, or that the bond had been in a third party's name, that execution might pass in their name, as is provided in contracts-matrimonial. *Answered*, During their living separately, as an aliment may subsist, so likewise must the diligence for making it effectual. The second reason was, he had offered to cohabit with her, and required her by way of instrument to come and stay at Inverary, and all things should be provided for her accommodation. *Answered*, This sham offer does not bear that the Earl would stay in family with her; and the term charged for being Lammas last, and the offer long subsequent thereto, it cannot affect that term, or stop its payment. THE LORDS refused the bill, and repelled the reasons, *nemine contradicente, quoad* the Lammas-term.

*Fol. Dic. v. 1. p. 407. Fountainhall, v. 1. p. 676.*