

1711. December 21.

JAMES HUTCHISON, Writer to the Signet, *against* THOMAS COUITS, Merchant in Edinburgh.

## No 79.

An alimentary provision belonging to a wife, having, after her 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.

AN alimentary annuity of 800 merks belonging to Elizabeth Dick Lady Penkil, having, after her separation from James Dumbar her present husband, upon the account of family differences, been divided by the Lords equally betwixt them of consent, during their living separately; James Hutchison factor for uplifting the whole annuity, craved allowance in his discharge of what he had advanced to the husband upon bond or bill, out of that part of the annuity appointed to be paid to the husband, and assigned by him to Hutchison. Thomas Couits, who was creditor, by alimentering the husband since the separation, pleaded preference to Hutchison, an assignee for a common anterior debt.

*Alleged* for Hutchison; After the division of the annuity, the half belonging to the husband was no longer alimentary in his person, so as he could not dispose of it for payment of his just debts.

*Answered* for Couits; The annuity being destined originally for the aliment of the Lady and her family, the husband assumed by her (who was not only a part, but head of the family, L. 195. D. De Verb. Signif.) hath right to a share of the aliment; which doth not alter its nature, from what it was before the division, or become of a different nature from the portion of it allotted to the wife, that is undoubtedly alimentary still; for *separatio a thoro et mensa, non tollit vinculum matrimonii*, and notwithstanding thereof, all the effects of a marriage continues safe, Can. 1. Caus. 32. Q. 1. et quod juris est in toto, idem est in aliqua ejus parte.

THE LORDS found, That the 400 merks payable to James Dumbar the husband, is not alimentary in his person, now after the separation from his wife.

*Forbes, p. 560.*

1714. December 16.

JOHN SPRUILL of Miltoun *against* The DUKE of DOUGLAS.

## No 80.

Found in conformity to Westnisbet *against* Morison, No 50. p. 10368, that a fund appropriated by a third party for the aliment of a wife, is not affectable by her husband's creditors.

THE late Marquis of Douglas in a contract of marriage of one Mrs Jean Douglas, obliged himself to pay L. 50 sterling to her in liferent, and to Mr Alexander Inglis her husband in fee, by way of tocher, with L. 100 Scots yearly, to her during life. The fee of the L. 50 sterling upon Inglis's death was assigned by his executrix, to Mr Thomas Hamilton the second husband, who transferred the same to his wife; but he made likewise another assignation there-after of the said L. 50, in favours of Lilius Douglas, his wife's sister, in liferent, and to Leggats her children, in fee.

The late Marquis having made payment, both of the annualrents of L. 50