

that it could not be attached for Mr Mitchelson's debt; and Lord Cranston having died, Mr Mitchelson brought an action against Lady Cranston, and Mr Lade, to whom her Ladyship was married after Lord Cranston's death, concluding for payment of the sum in Lord Cranston's bill, as being advanced on the credit of the Lady, and applied for the maintenance of her family. No 102.

*Pleaded* for Lady Cranston and her husband; Mr Mitchelson's taking Lord Cranston's bill shows he considered this as Lord Cranston's debt; which it clearly was, as every husband is bound to aliment his family. Such debts cannot affect the wife, as wives are not liable for their husbands' debts. Lady Cranston had no separate estate at the time these sums were advanced; therefore the pursuer must be presumed to have made the advances on the credit of Lord Cranston, and he can only affect his estate for the same.

*Answered* for the pursuer; He was not Lord Cranston's man of business, but was employed by Lady Cranston to look after her interest, while Lord Cranston's affairs were in confusion. It was on Lady Cranston's credit he made these advances, by which the debt in question was contracted; for, although Lady Cranston had not got possession of the West India estate at the time these advances were made, yet it was then certain she must succeed to it; as, in fact, soon after, she did; and it was on the faith of Lady Cranston's re-paying the money that it was advanced. Sundry letters of Lady Cranston's were produced, to show that this was the case; and that, even after the bill had been granted by Lord Cranston, Lady Cranston had promised to pay the debt.

*Replied* for the defenders; The letters founded on by the pursuer were imputed from Lady Cranston by her husband Lord Cranston. They infer no obligation on Lady Cranston; nor could do so, even if a promise had thereby been made to pay the debt, as a woman clothed with a husband can come under no valid obligation to pay the husband's debts.

Both parties quoted sundry authorities, in support of their different pleas.

THE LORD ORDINARY found, 'That the debt pursued on was the proper debt of the late Lord Cranston, and that the defender, his widow, is not legally bound to pay the same; therefore sustained the defences, and assoilzied.'

The pursuer reclaimed to the Court; and, on advising his petition, with the answers, 'the LORDS adhered.'

Act. *John Swinton, David Ross.*

Alt. *Alex. Elphinston.*

Clerk, *Tait.*

*Fol. Dic. v. 3. p. 286. Fac. Col. No 9. p. 17.*

1785. November 22.

JEAN LISK, and her *Curator ad litem*, against Her HUSBAND and his CREDITORS.

JEAN LISK was the widow of a gentleman, at whose death she became entitled to a terce out of his lands, amounting to L. 600 yearly.

No 103.  
An aliment found due to a wife out of the produce

No 103.  
of a terre de-  
rived from  
her first hus-  
band, in a  
question with  
her second  
husband's  
creditors.

She was afterwards induced, by fraud and deception, to marry a person who had long been in a state of bankruptcy. His creditors, in virtue of a sequestration, took possession of his effects; and Mrs Lisk, after endeavouring in vain to withdraw altogether the rents of her terre-lands\*, insisted for a yearly aliment out of that fund.

*Pleaded* for the Creditors of the Husband; The legal consequences of this marriage, though it was brought about by improper means, have been found to subsist in their fullest extent. The whole moveable effects antecedently belonging to the pursuer, together with the yearly produce of her real estate, are thereby fully vested in her husband. She cannot now pretend to a greater interest in the rents of her terre-lands than in any other part of his property. On the other hand, the marriage-state alone, independent of some peculiar stipulation, gives no support to a demand like the present. A wife's claim to an aliment must, in every case, bear proportion to her husband's immediate means of subsistence. When his estate has been squandered away, or, by the act of law, transferred to his creditors, her situation, however calamitous, admits not of any legal remedy; 25th November 1709, Turnbull, No 108. p. 5895. From a contrary doctrine, indeed, very irregular consequences would follow. Thus, if the present claim were sustained, it would unavoidably happen, that either the pursuer's husband would indirectly obtain from his creditors an aliment, to which he has no right; or to the extent of the allowance due to him by his wife, which, at every period, must be a share of what she has, his creditors would be at liberty to resume the funds destined to her.

*Answered*; The circumstances of the husband, it must be owned, are the sole measure of the maintenance due to his wife, when considered merely as a member of his family. But when she happens to be possessed of such an estate as does not fall under the *jus mariti*, though its annual profits during the coverture are subject to his administration, the case is very different. Here the husband's right is by the law itself incumbered with a suitable maintenance to his wife. He cannot avail himself of the one, without becoming liable to the other; nor can the case of his creditors, as brought into his place, by diligence merely of a personal nature, be separated from his own; 14th November 1770, Mary Jamieson *contra* Isabella Houston, No 109. p. 5898. The confusion supposed to arise from such a determination in the present case can never happen, as the sums found due to the pursuer will be rendered independent of her husband's *jus mariti*.

Some of the Judges, who thought the claim well founded, seemed to rest their opinion chiefly on the circumstances of deception in which this marriage had originated. The majority, however, considered it to arise, from the nature and situation of the pursuer's estate. By our ancient law, it was observed, the *jus mariti* was thought to be of that nature which no covenant could controul

\*. See No 7. p. 4865.

or diminish; and while this notion prevailed, such a claim as the present could not be admitted. But those rigid maxims have since been justly exploded. A woman, *vestita viro*, is now enabled to maintain every suit against her husband which is requisite for effectuating the obligations he has come under to her. As, therefore, in a question with the husband, the pursuer would have been entitled to an aliment corresponding to the produce of her own estate, this being necessarily implied in the legal assignation of her property, which results from the marriage; so the intervention of his creditors should not here make any difference.

By one interlocutor, the LORDS found 'the pursuer entitled to an aliment during the subsistence of the marriage; and that the same, as being merely alimentary, is exclusive of her husband's *jus mariti*, and debts of all kinds preceding the commencement of her present aliment; and modified the same to L. 200 Sterling.' On advising a reclaiming petition for the Creditors, with answers for Mrs Lisk, the sums formerly awarded were restricted to L. 150 Sterling.

Lord Ordinary, *Ankerville*.

Act. *H. Erskine, Wight.*

Alt. Lord Advocate, *Abercromby*.

Clerk, *Orme.*

C.

*Fol. Dic. v. 3. p. 288. Fac. Col. No 236. p. 365.*

\*.\* This judgment having been appealed from, the matter was compromised.

1795. December 1.

JAMES LEE *against* The EXECUTORS of ROBERT WATSON.

GEORGE LUMSDAIN married a daughter of Robert Watson. No contract took place on the marriage; but, by the family settlements, she was entitled to L. 125 from the father, on her marriage, which was accordingly paid, and to the like sum on his death.

Lumsdain became bankrupt, and he was apprehended upon suspicion of forgery. He, however, escaped from prison, and fled to Holland, leaving his wife behind him. His estate was immediately sequestrated. His wife, after having been for some time maintained by her father, went abroad, and resided with her husband for several years; but, she having become insane, he sent her back to Scotland, where, her father being dead, she was maintained by his executors.

James Lee having purchased, from Lumsdain's creditors, the provision which he was to receive in right of his wife, on her father's death, brought an action against his executors for payment of it.

No 103.

No 104.

When the husband's estate is sequestrated, and he absconds, leaving his wife behind him, his relations are entitled, in competition with his creditors, to retain a part of her fortune remaining in their hands, either for her aliment during the life-time of her husband, or for a suitable provision to her after his death.