

therefore, praying the Court to authorise Donald M'Pherson of Breckacy, her father, a party-contractor in the contract of marriage, and Captain Duncan M'Pherson, her brother, or either of them, to concur with her, or her daughter, and to do diligence, and to carry on processes against the said Edward M'Intosh, for implement and security of the provisions contained in the contract of marriage; or to appoint such other persons to that effect, as to the Court shall seem meet.

Upon this petition, the following deliverance was given: 'THE LORDS having heard this petition, they remit the same to this week's Ordinary on the bills, with power to his Lordship to call and hear parties procurators, and to do therein as he shall see cause.' And the cause being afterwards called before the Ordinary on the bills, and a minute made up, setting forth the facts stated in the petition, and the above remit, he pronounced an interlocutor,

'Authorising Donald M'Pherson of Breckacy, father to the petitioner, and Captain Duncan M'Pherson, her brother, or either of them, to concur with her, and her daughter, to do all diligence, and carry on all such processes, against Edward M'Intosh of Borlum, her husband, for implement and security of the provisions in her contract of marriage.'

For petitioner *Da. Dalrymple.*

*Fol. Dic. v. 3. p. 284. Fac. Col. No 44. p. 117.*

#### SECT. IV.

A Wife may prosecute Legal Diligence against her Husband, without being authorised by a Curator.

1638. July 13.

LA. GLENBERVIE *against* Her HUSBAND.

No 261.

THIS day inhibition was craved at the instance of the Lady Glenbervy against her husband, upon a bondmade by him in her favours, whereby he was obliged to infest her in liferent in certain lands, contained in the bond, in recompense of other lands, wherein she was infest, and which were thereafter sold by her husband, to the alienation whereof she consented, and which lands wherein her husband, by his other bond, was obliged to give her infestment; she, in her supplication, affirmed her husband was of intention to dispone and annailzie, therefore she craved inhibition thereupon, which the LORDS granted at her instance against her husband, *stante matrimonio*, albeit there was nei-

Inhibition was granted to a wife upon her husband's obligation to infest her in a jointure, although they lived together.

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.*