

1710. *February 8.* BARBARA FEA, Spouse to PATRICK TRAIL, younger of Elness, *against* JOHN TRAIL of Elness, her Husband's Father.

IN the action of aliment, at the instance of Barbara Fea, against John Trail, her father-in-law, wherein Patrick Trail, the pursuer's husband, who had deserted her and gone abroad, was also called ;—

ALLEGED for the defender,—Albeit he might be liable *jure naturæ* to aliment his son, no law obligeth a father to aliment his son's wife, separately from her husband, but she ought to follow, and reside with him.

ANSWERED for the pursuer,—Law obligeth parents to aliment their children, and grand-children, and much more a son's wife ; who is *una et eadem persona* with her husband, and upon that score was subjected by the civil law to the power of the husband's father, and reckoned a member of his family. 2. As there is a legal tie upon the defender to maintain his son and his family, he is *subsidiarie* liable, in absence of his son, to aliment his wife, which is a less charge : especially considering that it was through the defender's instigation that the pursuer's husband unjustly deserted her, without any fault on her part ; as appeared from a letter written by the defender, to his son at London, wherein he threatened to disown him, if he came in her company, or anywise owned her as his wife.

The Lords found, that, albeit a father is not bound to aliment his son's wife separately from her husband, yet it is relevant to make John Trail liable, by way of damage, to aliment the pursuer, that in a letter to his son, he threatened to disown him, if he owned her.

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1710. *February 17.* SUSANNA MARSHAL, only child of the deceased GEORGE MARSHAL, Merchant in Edinburgh, his second marriage, *against* GEORGE and HELEN MARSHALS, children of the first marriage, and Mr. ALEXANDER FARQUHARSON, Writer to the Signet, HELEN'S Husband, for his interest.

IN a competition betwixt Susanna Marshal, who had adjudged for the provision in her mother's contract of marriage, dated January 3, 1690, and George and Helen Marshals ; who had adjudged upon bonds of provision, granted to them in April, 1703, by their father, who made no contract of marriage with their mother : the children of the first marriage claimed to be preferred, at least to come in *pari passu* with Susanna Marshal : because they were creditors by the bond of provision ; and her interest was but a naked destination, in her mother's contract ; whereby she was heir of provision to the father, and liable to fulfil his deeds, and pay his debts *subsidiarie*, after discussing the heir of line. At least the children of the first marriage, were equally creditors by their bonds, as Susanna by the contract ; both being granted in consequence of the natural tie upon parents to provide for their children.