

1724. July 2.

JAMES MURRAY in Greenhill, and Others, against HELEN GRAHAM and Others.

JAMES MURRAY having employed Alexander Williamson, messenger, to execute a caption against John Bannantyne, merchant in Lanark, the said Bannantyne, after he was in the messenger's hands, was forcibly rescued by Helen Graham and other married women in the town of Lanark.

Upon this there was a process intended before the Sheriff against the deforcers, libelling the deforcement, and concluding payment of the debt and damages to the party, damages to the messenger, and a fine to the fiscal. In this process the husbands were called, but no decret given against them, the Judge having decerned the deforcers themselves in the sums libelled. There was a suspension of this decret obtained; and at discussing it was *pleaded* for the chargers.

That though the suspenders were clothed with husbands, yet that could not protect either their persons or estates from the effect of this decret, it being pronounced by a Judge who had a jurisdiction both civil and criminal, and proceeded upon a delict or crime committed by them.

It was *answered* for the suspenders, That indeed marriage would not have protected them had they been criminally pursued, but where the chargers had neglected that, and taken themselves to a civil process for payment of a debt, the law must take place in the same manner as if the suspenders had been only cautioners for the debt; in which case neither their persons, nor effects, which fell under the *jus mariti*, could be touched during the standing of the marriage.

THE LORDS found, that the sums in the decret charged on cannot affect the suspenders, who are clothed with husbands, their persons or estates falling under the *jus mariti* during the standing of their respective marriages; but found, that the same must affect their persons and estates after the dissolution of their respective marriages, or any separate estate which they may have during the standing of their marriages not falling under their husband's *jus mariti*.

Act. Arch. Hamilton, sen.

Alt. Alex. Menzies.

Clerk, Murray.

Fol. Dic. v. 3. p. 285. Edgar, p. 62.

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Some married women having deforced a messenger, decree was pronounced by an inferior judge against them, for payment of the debt and damages. Found, that the decree could only affect their persons and estates after the dissolution of the marriage, or any separate estate they had, exempted from the *jus mariti*.

1738. December 5.

GEORGE GORDON against JEAN PAIN and her Husband.

In the suspension of a decree obtained before the Commissary of Kelso against a married woman for slander, condemning her in a certain sum to the pursuer, the LORDS found, " that neither could personal execution against her,

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nor execution against the effects falling under the husband's *jus mariti*, pass upon it during the marriage."

Fol. Dic. v. 1. p. 403. Kilkerran, (HUSBAND and WIFE.) No 1. p. 256.

* * * C. Home reports the same case :

IN the process of scandal, at Gordon's instance, against Jean Pain, for having called him a base deceitful villain, and scoundrel, &c. ; the Commissary of Dumfries, upon a proof of the fact, fined her in L. 30 Scots, and assolizied her husband. She suspended on these grounds, *imo*, That the pursuer had laid a base contrivance for keeping her husband away from a Michaelmas election of the magistrates for the burgh of Annan, by sending to acquaint him, that a friend of his was dying, whom he immediately set out to see, four armed men gripped and kept him till the election was over, which she offered to prove, as a sufficient excuse for any opprobrious language she had given him. *2do*, The decret was inept, being against a wife, *stante matrimonio*, for a sum of money, who, having nothing of her own, cannot have a fine imposed on her for her delict ; and that it would be an inconsistency in law to allow execution to pass for levying such fines during the marriage.

THE LORDS found, that personal execution could not go against the wife *stante matrimonio* ; and that the goods in communion, or what fell under the *jus mariti*, were not affectable for the fine ; and allowed a proof before answer of the husband's being carried off.

C. Home, No 105. p. 169.

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1739. February 9. SPENCE against THOMSON and Others.

THE process for the pecuniary penalty upon the statute discharging play-houses, against the wife of Henry Thomson comedian, was cast on this ground, that her husband had not been called.

Fol. Dic. v. 3. p. 285. Kilkerran, (HUSBAND and WIFE.) No 2. p. 256.

No 296.

Where a wife is pursued for a delict, she cannot waive the defence that the husband was not called.

1749. December 8.

ISABEL FREEBAIRN and MUIR her Husband against HELEN GRANT.

A DECREE of the Commissary of Glasgow, obtained at the instance of Isabel Freebairn against Helen Grant, decerning her ' To stand at the court-door for half an hour, with a label above her head acknowledging her crime, in uttering certain injurious expressions against the said Isabel, and to subscribe a