

No 253.
not mention
her husband,
for his inter-
est, though
the summons
of furthcom-
ing ran in the
names of
both.

The writer by mistake had raised the horning in her name only, which inadvertency gave rise to the messenger's falling into the same error of arresting in her name, without mentioning the husband for his interest; but this defect was fully and abundantly supplied by the summons of furthcoming raised in his name, as well as his wife's, which redintegrates the arrestment, and accordingly the decret goes forth in both their names. *Replied*, Nullities cannot be so made up; for *esto* a woman should inhibit in her own name, would the husband pursuing a reduction *ex capite inhibitionis* validate that null inhibition? For a married woman has neither *persona standi in judicio* for pursuing nor defending, except where she is authorised by her husband; and, if he refuse, on application, the Judge can nominate another as her curator; and so it is done in the Parliaments of Paris, and it has been so decided with us, 9th and 10th of January 1623, Marshall, No 245. p. 6036, recorded both by Haddington and Durie: And the husband's posterior concurrence was not found sufficient to validate letters raised by the wife, 27th July 1631, Rollock, No 252. p. 6047. THE LORDS thought a wife might be considered as a minor *qui potest meliorem suam conditionem facere sine auctoritate curatoris et tutoris*, and that his subsequent consent validated the act; and that her not being *integra persona in judicio* without her husband, was introduced in his favour, and so ought not to be detorted to his prejudice; and therefore repelled the nullity, and sustained the arrestment.

Fol. Dic. v. 1. p. 406. Fountainball, v. 2. p. 141.

S E C T. III.

A Wife may prosecute her Husband, with a Curator *ad litem*.

1625. January 11. HAMILTON against Her HUSBAND.

No 254.

AN inhibition being sought by a woman called ——— Hamilton, upon her contract of marriage against her husband, that he should not annailzie in prejudice of the provision, conditioned to her by him, by the said contract of marriage, this inhibition craved by her supplication was refused, because the LORDS thought that no such inhibitions, nor no action could be sustained bewixt man and wife while the marriage stands.

Fol. Dic. v. 1. p. 406. Durie, p. 155.