

party to pursue ; as is observed both by Haddington and Durie, at the 10th of January 1623, Marshall *contra* Yule, No 245. p. 6036. For the Roman law, see l. 30. C. de jur. dot. et l. 7. § 4. C. de præscript. 30. vel 40 ann. And for the French law, Argentæus ad consuetudines Britanniae Aremoricæ, art. 427. et seq. And if with us a wife were seeking an inhibition against her husband, there is no necessity of a process in that case ; and to put her to it here, before she can get it executed, her husband's estate may be affected. The plurality of the LORDS ordained the bill to be intimated, to see if the husband would appear and make any answer. The next question here will be, though the Lords authorise a curator *ad litem* to the wife, to pursue her husband, yet if they will allow the same to the bairns of the marriage while their father is in life, to oblige him to secure them also ?

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After sundry intimations, none appearing for the husband to make answer, the LORDS resumed the consideration of the bill ; and, on the one hand, thought it hard she should lose her liferent provision for the writer's omitting that clause ; and, on the other hand, being unwilling to give a handle to malicious and froward wives to disturb their husbands, they remitted to the Ordinary on the bills, to examine if the husband's condition was turning worse, or if his creditors were going on in diligence, that so they might proceed, not upon her allegation, but *cum causæ cognitione*, and yet summarily, lest she might be prevented by anterior diligences.

Fol. Dic. v. 1. p. 406. Fountainball, v. 2. p. 239.

1748. February 5.

FINLAY against HAMILTON.

ANNA FINLAY having pursued John Hamilton, her husband's brother, before the Sheriff of Lanark for beating her, the Sheriff ' Sustained the objection to the instance, that her husband did not concur.'

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The Lords authorise the wife, when she is to pursue, and the husband will not concur.

But upon a bill of advocation, the LORDS ' Directed the Ordinary to remit the cause with an instruction, that the Sheriff should authorise her to carry on the action.'

Fol. Dic. v. 3. p. 284. Kilkerran, (HUSBAND AND WIFE.) No 14. p. 267.

* * D. Falconer reports the same case.:

ANNE FINLAY, spouse to William Hamilton, having, with concurrence of the procurator-fiscal of Lanark, raised a process before the Sheriff against John her husband's brother, for beating and maltreating her, the Judge sustained the defence made against the instance, that her husband refused to authorise her therein.

A bill of advocation being presented, the Lord Ordinary refused it ; but on
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a petition and answers, the LORDS remitted the cause, with instruction, that the Sheriff should authorise her to carry on the action.

It was prayed by the defendant, that before she were authorised to proceed, she should find caution for expenses, in case she should be found liable therein; which was refused.

Act. Lockhart.

Alt. R. Dundas.

Clerk, Gibson.

D. Falconer, v. I. No 235. p. 321.

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1773. January 18.

MARJORY M'PHERSON, Spouse to EDWARD M'INTOSH, of Borland, Supplicant.

Where the husband was *obseratus* and *latitans*, on account of the diligence of creditors, the father and brother of the wife, or either of them, were authorised by the Court, upon the wife's application, to concur with her and her daughter, to do diligence against her husband, for implement of the provisions in her contract of marriage.

MARJORY M'PHERSON presented an application to the Court, setting forth the terms of a contract of marriage between her and Borlum, containing certain obligations upon the husband, particularly, to infest her in an annual rent or annuity, to a certain extent, out of his lands, and other provisions, in favour of her, and the children of the marriage, of which there is one daughter now existing; that there was an omission in not inserting a nomination of trustees, at whose instance execution should pass; which it was in the power of the Court to supply, and had accordingly been practised in sundry cases, particularly 17th February 1703, No 257. p. 6050, where a married woman, representing by bill, that, by her contract, she was provided to the liferent of a certain sum; that the husband was *vergens ad inopiam*; and therefore craving, that certain persons, whom she named, might be authorised to pursue in her name, as her curators *ad lites*, for securing her jointure against her husband and his creditors, and her friends having omitted to insert some person in the contract, at whose instance execution should pass; there being no answer, the LORDS complied with the desire of the petition, as being conform to the common law, the practice of foreign nations, and our own decisions. She farther set forth, that, about six weeks ago, the said Edward M'Intosh, her husband, on account of sundry diligences and captions against him, was obliged to leave his own house, and that part of the country where he used to reside, and has since absconded; and there was the strongest reason to suspect and believe that he intends to dispose of his estate, and to retire, with what price he can get for it, to some foreign country: But, in the mean time, his creditors are proceeding to diligence; and if, by a subtlety of the law, the wife is debarred from the like course, both she and her child will be effectually excluded from the settlements and provisions in said contract of marriage: That, since her husband absconded, three inhibitions against him, which she particularised, have been signeted and recorded. There may be other diligences carrying on; but there is here sufficient ground for the Court to authorise her to insist for implement and security of the provisions in her contract of marriage; and