

No 132. burier of the wife, by this fiction, being supposed to have contracted with her the debt could only affect her own interest.

THE LORDS remitted with instructions to find the division tripartite, and that the funeral charges affected the wife's share. See LEGITIM.

Reporter, *Tinwald.* For the Executor, *H. Home.* Alt. *Maddowal.*
D. Falconer, v. I. No 173. p. 231.

* * See Kilkerran's report of this case, No 7. p. 3948.

1762. November 18. AGENT for MRS M'ALISTER against Her HUSBAND.

No 133.

A WOMAN having prevailed in a declarator of marriage, and the LORDS having given her a certain sum in name of costs, her agent, who had expended L. 104 over and above the sum for costs, pursued her husband for re-payment.—He urged, That he could not be liable for a debt contracted against his consent, and in prosecuting himself; and besides insisted, That the sum allowed by the Court was taxative, and excluded higher costs.—THE LORDS found the husband liable.

Fol. Dic. v. 3. p. 286. Fac. Col.

* * See this case, No 19. p. 4036.

DIVISION IV.

The Husband's powers with regard to the management of the common stock, and of the Children.

No 134.

The second husband of a liferenter, with her consent put the fiar in possession. She was barred from again removing him.

1623. December 10. IRVINE against ———.

ONE ——— Irvine being infeft, conform to a contract of marriage, by her husband, in certain lands to be held of himself, and thereafter, she coming in actual possession of the same, really, by labouring thereof, by the space of many years after her husband's decease, thereafter, married a second husband, in whose time, her husband, with her consent, as was alleged by the defender, put the said liferenter's son, who was fiar of the same land, in possession thereof, who became, and remained in the possession thereof, for the space of two years; and which son sells the same lands to a stranger, who also receives the possession from the son, disponer thereof, by the space of