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cur with him in the sale of the subjects; but this being also refused, he proceeded to obtain a decree before this Court, finding that he, in terms of the clause in the bond, might dispose of the subjects, and likewise decerning them to concur with him in the sale of the lands, and in granting the rights necessary in favour of the purchasers; and afterwards having sold the subjects at a public roup, and bound himself to grant a disposition to the purchaser, with concurrence of the said Margaret Buchanan and her husband, Harvie did agree thereto, but Margaret Buchanan entered a protest against the sale, and did, without the consent or concurrence of her husband, intent a process of reduction of the said heritable bond and disposition, upon the head of force, fraud, and circumvention; from which process Anderson was finally assoilzied; and having extracted his decree absolvitor, Margaret Buchanan was again desired to concur with him in granting a disposition to the purchaser of her subjects; but she still refused to do so, Anderson proceeded in diligence, by charging her with horning to implement, and then executing a caption against her, upon which she was imprisoned within the tolbooth of Glasgow; and after remaining above six months there, she applied to this Court for letters of suspension and liberation; and

*Argued*; That, by the opinions given by our lawyers, that diligence may proceed against the person of a woman *vestita viro ad factum præstandum*, such facts only are meant as are incumbent upon her by the law itself, without any obligation of her own, and which cannot be performed but by herself; so that, unless personal diligence were allowed to proceed against her for such performance, the rights of third parties could not be made effectual; but the case in question falls precisely under one of those in which personal diligence is totally incompetent.

THE LORDS 'unanimously refused the bill.'

Act. J. Boswell.

Alt. H. Erskine.

Clerk of the Bills.

Fol. Dic. v. 3. p. 285. Fac. Col. No 186. p. III.

No 298.

A husband having left Scotland, his wife was found liable to personal diligence, as an unmarried woman, for debts contracted after his departure.

1789. July 11. JANET CHURNSIDE *against* JAMES CURRIE.

THE husband of Janet Churnside having left Scotland in bankrupt circumstances, she entered into trade in order to maintain herself and her children.

Being charged with horning for payment of a bill of exchange granted by her to James Currie, she offered a bill of suspension, founded on the general rule of law, that a woman *vestita viro* could not, by any contract, subject herself to personal diligence.

This plea however was entirely disregarded, as inapplicable to a case like the present, where the debt had been contracted by a wife in her own name, while her husband was out of the kingdom. To refuse the ordinary legal compulsa-

ories, in such circumstances as these, would, it was observed, in the end prove hurtful to the women themselves, by preventing them from gaining a livelihood in trade, at a time when their husbands could not afford them any support.

The bill of suspension was refused by the Lord Ordinary. And

A reclaiming petition being preferred, it was refused without answers.

Lord Ordinary, *Gardenstone.*

For the petitioner, *John Erskine.*

C.

*Fol. Dic. v. 3. p. 285. Fac. Col. No 78: p. 141.*

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1790. February 19.

MRS ELISABETH CHALMERS *against* MRS HELEN DOUGLAS and her Husband.

IN an action of defamation and damages, the Commissaries having found sufficient evidence that the defender Mrs Douglas, 'was guilty of the scandal libelled,' decreed her to pay to the procurator-fiscal of court a considerable fine, and to the injured party farther sums in name of damages and of expenses, as also, to make a palinode; the fine, however, being to be restricted to a third of its former amount, 'in case she should appear in court, and judicially repeat and subscribe the palinode.'

Both parties brought the judgment under review by advocacy; the defender, beside objecting to the judgment in general, complaining, that the Commissaries had not qualified their sentence by declaring that no execution during her marriage could issue against her person, or her effects falling under the husband's *jus mariti*; and the pursuer complaining, that they had omitted to decern against the husband for the expenses of process.

The Lord Ordinary on the bills reported the cause, and afterwards a hearing in presence took place on the following points:

1. Whether execution ought to pass against the defender's person, to compel payment of damages and fine.

2. Whether the husband, or the goods in communion, were liable for payment of the money awarded in name of damages, or of fine,

3. Whether the expenses of process found due to the pursuer, could be demanded from the husband, as having in that character concurred in the defence.

On the first point, it was

*Pleaded* for the defender; A married woman, it is unquestionable, can come under no civil obligation, though with the consent of her husband, which shall be the ground of diligence, either against her person or her separate estate. Neither ought a different rule to be followed, if a fine has been imposed, or money decreed against a wife for reparation of damage. As not only her moveables, but the rents also of her heritage, belong to the husband *jure mariti*, it

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No execution against a wife's person for a debt *ex delicto*, incurred during the marriage; nor is the husband liable, or the goods in communion, on that ground; but for the expenses awarded to the pursuer, the husband is liable as *dominus litis*.

Upon appeal it was found, that the husband was responsible for the conduct of the cause, and liable in expenses only in so far as the same was malicious, vexatious and calumnious.