

the rendering the same to him, it was not sustained to free the debtor at the Creditors hands, viz. the husband who knew not of the delivery. No 219.

*Fol. Dic. v. 1. p. 403. Durie, p. 22.*

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Alt. *Nicolson* younger.

Clerk *Scot.*

1628. February 2.

MARGARET SCOT against JAMES WEILL and KATHARINE BANKS.

No 220.

MARGARET SCOTT relict of umquhile Mr Robert Stevin, pursued James Weill and Katharine Banks his spouse, for the violent spuilzieing of her goods insight, and plenishing out of her house. *Aledged* for James Weill, that he could not be convened for the said spulzie, because he was out of the country in the mean time, and so neither privy nor accessory to it. *Replied*, that he ought to be answerable for his wife's deed, otherwise the inconveniency would be great. THE LORDS found the exception relevant.

*Spotswood, p. 156.*

\*.\* Durie reports the same case :

In a spuilzie by one Scot relict of Mr Robert Stevin against Katharine Banks and James Weill her husband, which was restricted to wrongous intromission, and no spuilzie sought, the LORDS found, that the deed of wrongous intromission done by the wife without command of the husband, was not effectual to produce action against the husband, he not being accessory thereto, albeit the wife had medled with the goods violently, and had dispoined thereupon at her pleasure, and albeit the husband thereafter getting knowledge of the fact done by her, and of her dispoining thereof, and after the citation used also by the pursuer against him, did never express any act, by the which he made it manifest, that he disliked that fact, and disallowed thereof; and so albeit the pursuer replied, that the fact of the wife's intromission being done in the express name of her husband, and by her husband's right, viz. by a poinding, deduced at his instance, for debt owing to him, which was found unlawful, yet he thereafter making no expression, neither to the party, nor to the Magistrate of the town where he dwelt, nor to the officer deducer of the poinding, nor to any other person, to show that he was not accessory to that fact, which he ought to have done, if he had intended to have been freed thereof and which the pursuer alleged to be an express ratihabition, and so that he was subject to the hazard of the fact, albeit it were true, that he was not within the country at the very time of the act done by his wife, as he alleged; for it were of dangerous consequence, to give liberty to women clad with husbands to commit such wrongs, and that

No 220.

the husband (specially in civil matters, and pursued civilly before the civil Judge) should not be answerable therefor; whereas in contraventions the master is answerable for the fact done by the servant, after his knowledge of the fact, if he received the servant, albeit he was never accessory to the fact, nor ever knew of the same, but after the committing thereof, which hath not such grounds of equity, as pursuits for restitution of goods, unjustly taken away by the wife, which must be reputed to be allowed by the husband, and by his rathabition, in respect of the facts above written; all which were not respected, but the exception sustained, and no action found against the husband for any fact done by the wife, albeit civilly pursued, no more than he could be convened for a debt, contracted by her, or for bonds or obligations made by her without his consent.

Act. ———

Alt. *Miller.*Clerk, *Scot.*

In the cause of spuilzie betwixt Scot and Katharine Banks, whereof mention is made, February 2. 1628, the messenger who pointed, being convened as one of the spuilziers; the LORDS found the allegiance proponed for him relevant to liberate him both from spuilzie and wrongous introumission, bearing, that he pointed by virtue of the Lords letters, directed for pointing of the pursuers goods, for the debt therein contained: albeit the pursuer replied, that these letters could not be warrant to the messenger, seeing the decreet whereupon these letters of pointing were raised, was not given against the pursuer, and so he had not a warrant to point, and therefore he was not excusable; yet, THE LORDS found the messenger in *bona fide et in probabili ignorantia* to have pointed, seeing the Lords letters bore warrant to the officer, to point from this same pursuer, and it was not his part to search the decreet and warrant thereof; for albeit the letters were evil directed, yet that was not his fault: But the LORDS found, that he ought to allege, that he had delivered the gear pointed to the party at whose instance he had pointed; which being done, it was a liberation to him, otherways his retention of the same would enforce resitution against him, notwithstanding of the pointing. *See REPARATION.—SPUILZIE.*

Act. *Belshes.*Alt. *Nicolson.*Clerk, *Gibson.**Fol. Die. v. I. p. 403. Durie, p. 339. & 353.*

No 221.

1680. June 3. ROBERT NAIRN *against* WILLIAM BUCHANNAN.

ROBERT NAIRN charges William Buchanan on a bond for payment of 220 merks. The reason of suspension is, This bond was blank in the creditor's name, in the custody and hands of the charger's uncle, to whose wife I paid the money; and she was *præposita negotiis*, in so far as she was wont and in use to uplift other sums of her husband's; which was offered to be proved by