

No 294.

nor execution against the effects falling under the husband's *jus mariti*, pass upon it during the marriage."

Fol. Dic. v. 1. p. 403. Kilkerran, (HUSBAND and WIFE.) No 1. p. 256.

* * * C. Home reports the same case :

IN the process of scandal, at Gordon's instance, against Jean Pain, for having called him a base deceitful villain, and scoundrel, &c. ; the Commissary of Dumfries, upon a proof of the fact, fined her in L. 30 Scots, and assolizied her husband. She suspended on these grounds, *imo*, That the pursuer had laid a base contrivance for keeping her husband away from a Michaelmas election of the magistrates for the burgh of Annan, by sending to acquaint him, that a friend of his was dying, whom he immediately set out to see, four armed men gripped and kept him till the election was over, which she offered to prove, as a sufficient excuse for any opprobrious language she had given him. *2do*, The decret was inept, being against a wife, *stante matrimonio*, for a sum of money, who, having nothing of her own, cannot have a fine imposed on her for her delict ; and that it would be an inconsistency in law to allow execution to pass for levying such fines during the marriage.

THE LORDS found, that personal execution could not go against the wife *stante matrimonio* ; and that the goods in communion, or what fell under the *jus mariti*, were not affectable for the fine ; and allowed a proof before answer of the husband's being carried off.

C. Home, No 105. p. 169.

No 295.

1739. February 9. SPENCE against THOMSON and Others.

THE process for the pecuniary penalty upon the statute discharging play-houses, against the wife of Henry Thomson comedian, was cast on this ground, that her husband had not been called.

Fol. Dic. v. 3. p. 285. Kilkerran, (HUSBAND and WIFE.) No 2. p. 256.

No 296.

Where a wife is pursued for a delict, she cannot waive the defence that the husband was not called.

1749. December 8.

ISABEL FREEBAIRN and MUIR her Husband against HELEN GRANT.

A DECREE of the Commissary of Glasgow, obtained at the instance of Isabel Freebairn against Helen Grant, decerning her ' To stand at the court-door for half an hour, with a label above her head acknowledging her crime, in uttering certain injurious expressions against the said Isabel, and to subscribe a