

‘ recantation, all under the penalty of L. 10 Sterling; and afterwards decern-
 ‘ ing in the penalty as incurred;’ was suspended on this ground, that though
 James Howie, husband of the said Helen Grant, had, on the day on which she
 was appointed to give obedience, presented a petition, setting furth, That a-
 bout the commencement of this process, he had been married to the defender,
 and that the process could not proceed till he was called; the Commissary,
 without enquiring into the truth of the allegiance, disregarded this objection,
 and ‘ found the penalty incurred.’

No 296.

When the suspension came to be discussed, rather than be at more trouble
 about the matter, Helen, the suspender, submitted to make an acknowledg-
 ment of the injury in the commissary-court, in presence of the chargers, in
 which the chargers acquiesced; and it being appointed by interlocutor of the
 Ordinary to be done, it was done accordingly.

Thereafter the chargers enrolled the cause, and insisted for expenses, which
 the Ordinary found due to take effect at the dissolution of the marriage. A-
 gainst which the chargers reclaimed, and insisted that the husband should also
 be found liable; but upon advising the same, with the answers, the marriage
 being instructed by a decree of the Sheriff of Lanark, fining the parties for a
 clandestine marriage, the LORDS, without entering upon the question, whether
 or not the husband should be liable for the expenses, supposing the injury
 to have been committed before the marriage, found, ‘ that the process could
 not proceed, the husband not being called, which objection the wife could not
 wave.’

Kirkerran, (HUSBAND and WIFE.) No 15. p. 267.

1775. July 27. JOHN ANDERSON *against* MARGARET BUCHANAN.

MARGARET BUCHANAN, wife of Andrew Harvie, in the course of her busi-
 ness of retailing ale and spirits, had contracted a debt to John Anderson malt-
 man, to the amount of L. 19; and, being distressed for some other small debts
 which she was owing, Anderson was induced to lend her L. 6 to pay them off,
 upon her granting an heritable security to him upon certain subjects to which
 she had succeeded, as heir to her brother; and, accordingly, an heritable bond
 for L. 25 was executed by the said Margaret Buchanan and her husband,
 whereby the principal sum was not to be demanded till the term of Martinmas
 1770, three years and nine months after the date of the bond; and it is there-
 by declared, that, in default of redemption of the said lands upon the foresaid
 term, full power is given to the said John Anderson to sell and dispose upon
 the foresaid lands, and to retain out of the price the foresaid sum lent, interest,
 and expenses. And as neither the principal, nor even the interest, was paid at
 that term, Anderson applied to Margaret Buchanan and her husband to con-

No 297.

Execution
 may be used
 against a
 wife's person,
 upon her obli-
 gation *ad fac-
 tum prastan-
 dum.*

No 297.

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-