

No 158. she alleged that she was clad with a husband, who not being convened in the process, nor summoned thereto, no process ought to be granted against her ; which allegiance was repelled, seeing the husband was ten years out of the country together, before the pursuit, and was not returned, and it was not known whether he was dead or living ; and all this time the defender was in use to bargain with this pursuer, and buy wines, and keep an inn, so that she ought to be answerable for her own receipts.

Act. *Aiton.*

Alt. *Russel.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 398. Durie, p. 438.

No 159.

1663. *June 23.*

HAY *against* CORSTORPHIN.

THERE being a decret recovered at the instance of Euphan Hay, shopkeeper in St Andrew's, against Elizabeth Corstorphin, for certain commodities furnished to the defender for her house ; this decret being recovered before the Bailies of the regality, was brought in question before the Lords, upon this ground, That the defender, the time of the furnishing, was clad with a husband, and so she could not be liable for any debt contracted by her *stante matrimonio*.— To which it was *answered*, That by the space of 15 years the defender was keeper of a house, and lodged boarders *proprio nomine*, there being diverse reports for the time of her husband's death, in which time the particulars libelled were furnished to her for the use and necessity of her family and boarders.

THE LORDS sustained the decret.

Fol. Dic. v. 1. p. 398. Gilmour, No 83. p. 65.

* * * Stair reports the same case :

THE said Euphan having obtained decret against the said Elizabeth for certain furniture to her house, she suspended on this reason, That her husband was not called. The charger offered to prove, in fortification of her decret, that her husband was 20 years out of the country, and she reputed as widow.

Which the LORDS found relevant.

Stair, v. 1. p. 192.