

No 63. THE LORDS found Mr Francis Robertson conjunctly and severally liable with the Lady Gees.

C. Home, No 43. p. 76.

1760. March 3.

HARDIE against BLACK.

No 64.

THE tenant of a room of an upper floor having erected a comb-pot for dressing wool, without taking the proper precautions generally used in such manufactures to prevent fire, by which means the house was burnt down, was found liable in damages to the proprietor.

Fol. Dic. v. 4. p. 220.

* * This case is No 69. p. 10133, *voce* PERICULUM.

SECT. XI.

Whether one is liable for the malversation of those under his authority?—Complaint raised in name of another without his authority.

1590. November. LAIRD OF LUDQUAIRN against EARL MARISCHAL.

No 65.

▲ man found liable for the violent act committed by his wife in his absence.

THE Laird of Ludquhairn pursued the Earl Marischal and his Lady for the demolishing and down-casting of a mill and dam thereof. *Excepted* by my Lord, That he could not be convened for any deed done by his Lady, because, in the mean time, he was forth of the country, and knew not what was done by her. Likeas, by the law, *ne maritus pro uxore, aut uxor pro marito, &c.* it is plain. *Replied*, That my Lady, in his absence, was *præposita negotiis*, and had my Lord's household servants at the down-casting thereof. THE LORDS found, That my Lord might be convened notwithstanding of his absence at the time. Next, it was *alleged*, That there was no wrong in the down-casting thereof, because my Lord having all the Lordship of Innerrugy pertaining to him in heritage, together with the mills and multures thereof, with the thirlage of the same lands to the mills of Innerrugy, *licuit ei uti suo jure*, and stop any other mill to be bigged. *Replied*, That the pursuer's mill had gone for the space of fifteen days, without any stop or impediment; so that the defender could not have stopped her but by order of law, *quia non potest sua*

auctoritate jus sibi dicere. THE LORDS found he might not have cast down the said mill by way of deed.

No 65.

Fol. Dic. v. 2. p. 343. Spottiswood, (HUSBAND and WIFE.) p. 154.

1597. February. EARL of ERROL against LUDQUHAIRN.

THE Earl of Errol pursued the Laird of Ludquhairn for contravention of an act of law-borrows, because the said Laird's son invaded and pursued Alexander Cheyne, servitor to the said Earl, for his slaughter, with a drawn sword, the said Nathaniel being unforisfamiliar, and received by his father after the deed done. It was *alleged*, That no contravention could be obtained against the said Laird, because the said Nathaniel being charged by himself, had found caution. It was *answered*, That the Laird had found caution for himself, his bairns, and all whom he might have, which behoved to comprehend the said Nathaniel his son. THE LORDS found, That the pursuer might pursue Ludquhairn and his cautioner and that the action was competent against the said Nathaniel and his particular cautioners. *2do*, It was *alleged*, that Nathaniel was forisfamiliar, because his father had given him heritable infeftment of certain lands, and that they offered him to prove, that he was household feed servant to the Laird of ———. It was repelled, as contrary to the summons, because that he was in household with his father unforisfamiliar.

No 66.

Contravention sustained against a father, who had found caution in lawburrows upon a fact committed by his son unforisfamiliar, and received into his father's house after the fact.

Fol. Dic. v. 2. p. 343. Haddington, MS. No 611.

1610. May 31. BELL against Hoc.

A WIFE being acted in the books of the session to abstain from the company of a slanderous man, under a pecunial pain, albeit her husband have consented to the act, she being thereafter decerned by that session to have contravened that act, and being charged for the penalty, the same will not have execution against the executors of her deceased husband, because it is not thought reasonable, that the husband's goods shall be evicted for the penalty of an injury done by his wife to himself.

No 67.

Fol. Dic. v. 2. p. 344. Haddington, MS. No 1872.