

1709. *January 18.*BARBARA FEA *against* JOHN TRAIL, and DAVID TRAIL.

No 9.
A woman, purfuer of a procefs, having ftruck the defender on the mouth with the back of her hand, but no blood following, this not found to amount to fuch a beating and invading as to incur tinfel of the caufe.

BARBARA FEA, fpoufe to Patrick Trail younger of Ellnefs in Orkney, purfues John Trail, her father-in-law, and David Trail, his fecond fon, for repoffeffing her in thefe lands, whence they had ejectioned her. David gives in a complaint to the Lords, that fhe had beat him in the face; and fo, by the act of Parl. 1594, had loft the caufe. *Answered*, That it was a politic stratagem, and contrivance of his own to infnare her; and all fhe did, when he was reproaching her with vile obfcene language, fhe clapped her hand on his mouth to ftop his railing; and he was neither blae nor bloody, nor could fhe w fhe the leaft appearance of any ftroke. The witneffes being examined, deponed, That, after fome talk and whifpering amongft them, they faw her hit him in the mouth with the back of her hand, but no blood followed. THE LORDS having advifed the depositions, found this was not fuch a beating and invading, as to fall under the act of Parliament interfering tinfel of the caufe.

. The following is another branch of the fame caufe, referred to, *voce*
HUSBAND and WIFE.

1710. *January 31.*—I reported Barbara Fea, fpoufe to John Trail of Ellnefs in Orkney, *contra* John Trail her husband's father, for an aliment, on this ground, That her husband had deferted her by his father's infligation, and as he was bound to aliment his fon, fo, by the fame rule, he behoved to entertain her, being his wife, and *una et eadem persona*, in construction of law. *Answered*, This purfuit, without concurrence of her husband, was null, a wife not being *integra persona*, unlefs authorized. *Replied*, To fupply this defect my husband is cited by a diligence. THE LORDS repelled the dilator. *2do*, *Alleged* for the defender; Though a father be *jure naturæ* bound to aliment his children; yet if they be come to age, and in a probable way of gaining their own livelihood, no law will oblige him, and *multo minus* will this extend to his wife; but *ita est* he is ferving in one of the Queen's fhips of war, and able to maintain both himfelf and her, and fhe ought to follow where his affairs call him. *Answered*, This is to tofs me from one hand to another; when I go to my husband, he fhews me letters from his father, difcharging him to own me, under the pain of exheredation, and his difpleafure. When I apply to my father-in-law, he bids me go to my husband and cohabit with him, fo I am mocked betwixt the two, which neither law nor confcience will allow.—Some of the LORDS thought that a fon could have no action for aliment, if he was able to entertain himfelf; and *esto* he were not, yet he could not crave a feparate aliment, but behoved to come in and take a part of his father's entertainment in his family, fuch as it was, and not pretend to live by himfelf, and burden his father with the expence; and it being put to the vote, whether her father-in-law was bound to aliment her, or if fhe muft follow her husband, it carried in the negative by the Prefident's vote, that her father-in-law was not bound to aliment her. See ALIMENT.

Fol. Dic. v. 1. p. 93. Fountainball, v. 2. p. 481. & 561.