

1724. July 2.

JAMES MURRAY in Greenhill, and Others, against HELEN GRAHAM and Others.

JAMES MURRAY having employed Alexander Williamson, messenger, to execute a caption against John Bannantyne, merchant in Lanark, the said Bannantyne, after he was in the messenger's hands, was forcibly rescued by Helen Graham and other married women in the town of Lanark.

Upon this there was a process intended before the Sheriff against the deforcers, libelling the deforcement, and concluding payment of the debt and damages to the party, damages to the messenger, and a fine to the fiscal. In this process the husbands were called, but no decret given against them, the Judge having decerned the deforcers themselves in the sums libelled. There was a suspension of this decret obtained; and at discussing it was *pleaded* for the chargers.

That though the suspenders were clothed with husbands, yet that could not protect either their persons or estates from the effect of this decret, it being pronounced by a Judge who had a jurisdiction both civil and criminal, and proceeded upon a delict or crime committed by them.

It was *answered* for the suspenders, That indeed marriage would not have protected them had they been criminally pursued, but where the chargers had neglected that, and taken themselves to a civil process for payment of a debt, the law must take place in the same manner as if the suspenders had been only cautioners for the debt; in which case neither their persons, nor effects, which fell under the *jus mariti*, could be touched during the standing of the marriage.

THE LORDS found, that the sums in the decret charged on cannot affect the suspenders, who are clothed with husbands, their persons or estates falling under the *jus mariti* during the standing of their respective marriages; but found, that the same must affect their persons and estates after the dissolution of their respective marriages, or any separate estate which they may have during the standing of their marriages not falling under their husband's *jus mariti*.

Act. Arch. Hamilton, sen.

Alt. Alex. Menzies.

Clerk, Murray.

Fol. Dic. v. 3. p. 285. Edgar, p. 62.

No 293.

Some married women having deforced a messenger, decree was pronounced by an inferior judge against them, for payment of the debt and damages. Found, that the decree could only affect their persons and estates after the dissolution of the marriage, or any separate estate they had, exempted from the *jus mariti*.

1738. December 5.

GEORGE GORDON against JEAN PAIN and her Husband.

In the suspension of a decree obtained before the Commissary of Kelso against a married woman for slander, condemning her in a certain sum to the pursuer, the LORDS found, " that neither could personal execution against her,

No 294.