

No 259.

a petition and answers, the LORDS remitted the cause, with instruction, that the Sheriff should authorise her to carry on the action.

It was prayed by the defendant, that before she were authorised to proceed, she should find caution for expenses, in case she should be found liable therein; which was refused.

Act. Lockhart.

Alt. R. Dundas.

Clerk, Gibson.

D. Falconer, v. I. No 235. p. 321.

No 260.

1773. January 18.

MARJORY M'PHERSON, Spouse to EDWARD M'INTOSH, of Borland, Supplicant.

Where the husband was *obseratus* and *latitans*, on account of the diligence of creditors, the father and brother of the wife, or either of them, were authorised by the Court, upon the wife's application, to concur with her and her daughter, to do diligence against her husband, for implement of the provisions in her contract of marriage.

MARJORY M'PHERSON presented an application to the Court, setting forth the terms of a contract of marriage between her and Borlum, containing certain obligations upon the husband, particularly, to infest her in an annual rent or annuity, to a certain extent, out of his lands, and other provisions, in favour of her, and the children of the marriage, of which there is one daughter now existing; that there was an omission in not inserting a nomination of trustees, at whose instance execution should pass; which it was in the power of the Court to supply, and had accordingly been practised in sundry cases, particularly 17th February 1703, No 257. p. 6050, where a married woman, representing by bill, that, by her contract, she was provided to the liferent of a certain sum; that the husband was *vergens ad inopiam*; and therefore craving, that certain persons, whom she named, might be authorised to pursue in her name, as her curators *ad lites*, for securing her jointure against her husband and his creditors, and her friends having omitted to insert some person in the contract, at whose instance execution should pass; there being no answer, the LORDS complied with the desire of the petition, as being conform to the common law, the practice of foreign nations, and our own decisions. She farther set forth, that, about six weeks ago, the said Edward M'Intosh, her husband, on account of sundry diligences and captions against him, was obliged to leave his own house, and that part of the country where he used to reside, and has since absconded; and there was the strongest reason to suspect and believe that he intends to dispose of his estate, and to retire, with what price he can get for it, to some foreign country: But, in the mean time, his creditors are proceeding to diligence; and if, by a subtlety of the law, the wife is debarred from the like course, both she and her child will be effectually excluded from the settlements and provisions in said contract of marriage: That, since her husband absconded, three inhibitions against him, which she particularised, have been signeted and recorded. There may be other diligences carrying on; but there is here sufficient ground for the Court to authorise her to insist for implement and security of the provisions in her contract of marriage; and

therefore, praying the Court to authorise Donald M'Pherson of Breckacy, her father, a party-contractor in the contract of marriage, and Captain Duncan M'Pherson, her brother, or either of them, to concur with her, or her daughter, and to do diligence, and to carry on processes against the said Edward M'Intosh, for implement and security of the provisions contained in the contract of marriage; or to appoint such other persons to that effect, as to the Court shall seem meet.

Upon this petition, the following deliverance was given: 'THE LORDS having heard this petition, they remit the same to this week's Ordinary on the bills, with power to his Lordship to call and hear parties procurators, and to do therein as he shall see cause.' And the cause being afterwards called before the Ordinary on the bills, and a minute made up, setting forth the facts stated in the petition, and the above remit, he pronounced an interlocutor,

'Authorising Donald M'Pherson of Breckacy, father to the petitioner, and Captain Duncan M'Pherson, her brother, or either of them, to concur with her, and her daughter, to do all diligence, and carry on all such processes, against Edward M'Intosh of Borlum, her husband, for implement and security of the provisions in her contract of marriage.'

For petitioner *Da. Dalrymple.*

Fol. Dic. v. 3. p. 284. Fac. Col. No 44. p. 117.

SECT. IV.

A Wife may prosecute Legal Diligence against her Husband, without being authorised by a Curator.

1638. July 13.

LA. GLENBERVIE *against* Her HUSBAND.

No 261.

THIS day inhibition was craved at the instance of the Lady Glenbervy against her husband, upon a bondmade by him in her favours, whereby he was obliged to infest her in liferent in certain lands, contained in the bond, in recompense of other lands, wherein she was infest, and which were thereafter sold by her husband, to the alienation whereof she consented, and which lands wherein her husband, by his other bond, was obliged to give her infestment; she, in her supplication, affirmed her husband was of intention to dispone and annailzie, therefore she craved inhibition thereupon, which the LORDS granted at her instance against her husband, *stante matrimonio*, albeit there was nei-

Inhibition was granted to a wife upon her husband's obligation to infest her in a jointure, although they lived together.