

No 227. ting tacks, and selling his cattle ; which compensation the LORDS repelled, in respect of the said quality in the oath.

*Kilkerran, (HUSBAND AND WIFE.) No 18. p. 270.*

S E C T. III.

Where the Wife carries on traffick under the Husband's eye.

1609. November 23. MUIRHEAD against DOUGLAS.

No 228.

IN an action pursued by Muirhead merchant, against James Douglas in Leith, for L. 800, as the price of certain wines, sold and delivered by the said Muirhead to James Douglas's wife ; it was *alleged*, That the summons was not relevant, never condescending that the wine was bought by the said James Douglas's command ; seeing a wife had no power to contract any such debt without her husband's warrant, neither could she bring such debt upon him.—It was *answered*, That she held an open wine tavern, and sold commonly wine by her husband's knowledge, and so being *præposita tabernæ*, the pursuer had good action to pursue the husband for payment of the prices thereof.—THE LORDS found the summons and reply relevant to be proved by witnesses.

*Fol. Dic. v. 1. p. 403. Haddington, MS. No 1648.*

1610. January 18. A. against B.

No 229.

A PURSUIT being moved against a wife principally, and her husband, for his interest, for payment of three barrikens of claret wine, bought and received by her, the said wife, being a taverner and runner of wine, from the pursuer ; it was *alleged*, That no process could be granted in this matter, because the said block was made by the wife, being married, without consent of her husband, and so was not lawful.—It was *answered*, That she was *præposita tabernæ*, and ran wine publicly, and therefore might lawfully buy wine in great.—THE LORDS, understanding that she had diverted from her husband, and dwelt apart from him, very slanderously and dishonestly, sustained the action against her principally, declaring that the decree should have no action against the husband in his person, lands, or goods,

*Fol. Dic. v. 1. p. 403. Haddington, MS. No 1744.*