

DIVISION VIII.

The Wife how far *valens agere* without concurrence
of her Husband.

S E C T. I.

Cannot pursue without being authorised by her Husband,
or a *curator ad lites* if the Husband decline.

1581. *May.* LADY COLLUTHIE *against* MAXWELL.

No 244.
The Lords refused to sustain process at the instance of an heiress without concurrence of her husband, altho' his fraud in declining to concur was manifest.

THERE WAS a gentlewoman called C. Lady R., heretrix and portioner of the lands of R., that gave in a supplication, and desired her husband, the Laird of F. Maxwell, to concur and authorise her in her pursuit in an action and cause against the Laird of C., because the party sought process against her, and alleged against her, That she had no person to stand in judgment without her husband, *quia fraudulenter et malitiose actum fuit ex parte viri, et maxime apparebat nonnullis dominorum consilii.* THE LORDS would not grant the desire of the supplication, and found, by interlocutor in making answer to the bill, that she had no place to stand in judgment without the consent of her husband. *Ego tamen, et Dominus C. in contraria fuimus opinione, nam succurend, fuit mulieri in hoc casu propter apertam viri fraudulentiam; et ita in suprema parisi curia iudicatum fuisse, ut vir cogi potuit auctoritatem in causa civili et criminali uxori imperitare, affirmat Joannes Jubertus in contractu suo de jure gallico de uxoris titulo et viri mutua successione.*

Fol. Dic. v. 1. p. 405. Colvil, MS. p. 299.

No 245.
The Lords sustained an action at the instance of a wife without consent of her husband, implement of a contract in her own favour.

1623. *January 9.* MARSHALL *against* MARSHALL and YULE.

IN a suspension raised by Marshall *contra* Marshall and his Son, and Yule spouse to his son, for suspending of the charge raised at their instance, upon the contract of marriage, wherein the supender was obliged to procure to his son during his lifetime, and to the said Yule his son's future spouse during her lifetime, a rental of certain lands, as the contract of marriage bears, the LORDS found, that the spouse might seek implement of that part of the con-