

1675. December 17. WILSON against DEANS.

No 230.

It was found, That a woman keeping a shop, and trafficking as a merchant, with the knowledge of her husband, he is liable for debts contracted by her, upon account of her traffick, *actione institoria*.

Reporter, *Forret*.

Fol. Dic. v. 1. p. 403. Dirleton, No 319. p. 155.

. Gosford reports the same case :

In a pursuit at Dean's instance against Wilson, for payment of a bond granted by her for the price of wines, it was *alleged*, that the bond was null, being granted *stante matrimonio*.—It was *replied*, That she was *præposita negotiis*, she keeping an inn or tavern, where the goods were employed under her custody, and having granted bond therefor, was obliged in law for payment.—It was *duplied*, That as *præposita negotiis* she might burden her husband who did not subscribe, but he being dead, his heirs or executors were only liable.—THE LORDS did long debate amongst themselves upon that general case, and found a great difference where a husband hath a particular vocation, such as being an agent or writer, which is his only calling, and prefers and authorises his wife to keep a shop or tavern, and where they have no distinct calling ; but did not decide if in that case her bond did oblige herself, after her husband's decease ; but having considered this case, where the defender and her husband were jointly employed in keeping a tavern at Falkirk, to which they both gave their daily attendance, they found that the wife, as *præposita negotiis*, was not personally liable, but only the husband's heirs or executors, the bond being given *stante matrimonio*.

Gosford, MS. No 823. p. 519.

S E C T. IV.

Operation of Inhibition in taking off the effect of *Præpositura*.

1520. July 26. KINGAID against SANDERSON.

No 231.

JEAN KINGAID, executrix to her husband Walter Yule, pursues Alison Cranstoun, and Peter Sanderson her spouse, for payment of L. 107 of a bond made by

A husband found not obliged to pay even for

No 231.
small necessaries to his family, where he instructed his giving to his wife a sufficient competency for defraying such charges, and that she was also inhibited before the furnishing.

Alison to the defunct, without her husband's consent.—*Replied*, The bond is granted for mean and small furnishings, viz. ale, bread, salt, candle, soap, and other small furnishing, for entertainment of the house in *anno* 1617.—*Duplied*, She had no necessity to contract such debt, because her husband paid to diverse persons, her creditors, and to herself, L. 500 for entertainment of her and her family, and others, their necessaries in meat, *anno* 1617; likeas she was inhibited *anno* 1616, before the making of the bond. Admits the exception and duply to probation.

Clerk, *Hay*.

Fol. Dic. v. 1. p. 404. Nicolson, MS. No 615. p. 423.

No 232.

1675. *June* 23. WIDOW AUCHINLECK *against* EARL of MONTEITH.

INHIBITION being served against a wife, and she being provided in a livelihood by her husband, the LORDS found him not bound to pay any furnishing and abulzeaments for her, although the merchant was ignorant of the inhibition.

Fol. Dic. v. 1. p. 404.

* * * See Gosford's report of this case, No 95. p. 5879.

* * * Dirleton reports the same case:

WIDOW Auchinleck pursued the Earl of Monteith, for the price of certain ware for his Lady's clothes, extending (conform to an account) to the sum of L. 177. It was *alleged* for the Earl, That the said ware was furnished after he had served inhibition against his Lady that she should not contract debt to his prejudice. Whereunto it was *answered*, That the said furnishing was necessary for the Lady's clothes, and albeit after inhibition, she could not contract debt to her husband's prejudice, yet the Earl being obliged to furnish her clothes and other necessaries, he will be liable for what is furnished to her necessarily.

THE LORDS, (upon the report of the debate foresaid) having considered the inhibition, and that the execution of the same was not registrated, were of the opinion, that the said inhibition was null; but because it was not questioned by the defender, they ordained that the reporter should hear, what answer the defender's procurators could make as to the said nullity.

It was thought hard by some of the Lords, that a merchant, after inhibition at the husband's instance, furnishing *bona fide* to the wife, should be frustrated upon the pretence of an inhibition, unless either the said inhibition had been intimated to the merchant, or it were notourly known that the wife was inhibited; seeing such inhibitions are granted without any ground either of writ, as