

pains, which, although it were due to a *negotiorum gestor*, as in law it is not, would not stop the confirmation of the executors nominate.

No 216.

And accordingly the LORDS, upon the 18th of June 1745, found, ' That the mother, Christian Ramsay, was not entitled to a third, or any other proportion of the accompts and bills relative to, or which were the produce of the management of the farm, brewery, and coal-driving; and preferred the executors of Elizabeth Wallace to the whole thereof; and even as to bills and bonds taken in the name of the said Christian Ramsay, other than those which did appear *ex facie* to be the result of the trade of brewing, &c. remitted to the Commissaries to hear parties, Whether the same should not be presumed to be *in bonis* of Elizabeth Wallace the daughter, unless the nearest of kin of the mother should bring sufficient evidence to shew that the money of such bonds or bills might have arisen from some separate subject or business carried on by her.'

Kilkerran, (HUSBAND AND WIFE.) No 9. p. 261.

See Tait against Biggar, *voce* EXECUTOR, No 21. p. 3841.

S E C T. II.

How far *Præpositura* presumed to extend.

1582. *June*. LADY BOYD *against* LD AIRTH, &c.

THE Lairds of Airth, Kilsyth, &c. were pursued by the Lady Boyd, and James Fleming her husband for his interest, as cautioners for the Laird of Boyd her son, to pay to her certain yearly duties, in victuals, capons, and silver, because the Laird her son was obliged, by virtue of an obligation registered in the books of Council. The foresaid cautioners being charged obtained suspension, *alleging*, That they had made payment of the said duties to the Lady, and produced her acquittances and discharges thereupon. It was *objected* against the discharges and acquittances, That they were not sufficient, because the said Lady being clad with a husband, it was necessary to have his consent to the said discharges. To the which it was *answered*, That albeit the said Lady was clad with a husband, yet she intromitted with, and took up the duties of her own conjunct fee by herself, *et fuit præposita omnibus hissce negotiis*, and gave acquittances and discharges by herself, without her husband. To this was *answered*, That albeit *mulier et uxor possunt profici aliquibus negotiis, et exercere ea quæ spectant ad rem domesticam gubernandam; tamen in rebus magni*

No 217.

A wife is presumed to be *præposita negotiis domesticis viri*; but this presumption was not extended to a lady tenceer granting discharges of her tenceer duties, which it was found she could not do, without consent of her present husband.

No 217.

momenti, et ubi requiritur scriptura, it is necessary to have the consent of the husband, and unto the giving of discharges and acquittances.—THE LORDS, after long reasoning, repelled the reasons of the summons, and found, by interlocutor, that a wife might not give acquittances and discharges, without the advice and consent of her husband, *quia vir est caput uxoris, et de jure nostro, durante matrimonio, maritus est dominus omnium bonorum.*

Fol. Dic. v. 1. p. 403. Colville, MS. p. 330.

No 218.

1587. *June* LAIRD OF PITTAROW *against* his TENANT.

THE LAIRD of Pittarow warned a tenant to flit and remove from certain lands. It was excepted that since the warning the Lady being *præposita negotiis familiae*, had received from the defender three hogs as duty of the ground. *Answered*, that the allegiance was not relevant, except he would say that the lady had received the same at the command of the Laird her husband; and so found by the Lords.

Fol. Dic. v. 1. p. 403. Colvil, MS. p. 417.

1622. *March 16.*MACMATH *against* HOME.

No 219.

A person having borrowed money from a wife, and given his obligation, was found *in tuto* to repay the sum to the wife and retire his obligation, though he was informed by the husband that the money was his.

SIR GEORGE HOME was pursued by William Macmath, to make payment to him of a certain sum of money, alleged borrowed by the said Sir George from Janet Nisbet, spouse to the said William Macmath, whereupon he had given to her his obligation, and which the said William alleged he had intimated to the said Sir George, while he remained debtor in the said sum; and this summons was referred to Sir George his oath, who granted the borrowing of the sum from the said pursuer's wife, and that he had given her his obligation thereupon, and that William Macmath acquainted him therewith, and desired him to take order for the same before he had repaid the sum; but he declared, that thereafter he had paid the sum to the pursuers wife, to whom he was bound by his bond, and retired his own bond again out of her hands, &c. which payment made to the wife, the LORDS sustained, and assolized the defender from the husband's pursuit.

The like was done 19th July, 1634. betwixt Guthrie, cook in Edinburgh, and Betson of Cardin; where upon a bond and inhibition delivered by the creditor's wife to the debtor, who had payed a part of the debt to the wife, for