

No 233. bition against payment when you had the benefit from the sale. Likeas, I furnished her before your serving the inhibition, and thought myself *in tuto* to continue the same, when I saw you permitted her *exercere tabernam*, she being *præposita huic negotio*. *Replied*, A registrated inhibition against a wife needs no other intimation; for he was not obliged to acquaint and discharge every individual brewer, and his suffering her to retail the ale gave her no power to buy it; for he made his bargains with some particular brewers, and ordered them to furnish her, of which number Ker the pursuer was none: And *l. 5. § 11. D. De act. Institor.* does excellently declare, that a person being employed to sell out goods and ware will not import a *præpositura* for buying, unless that power be expressly granted. THE LORDS found the inhibition registrated need no farther intimation to any party; but found it relevant *scripto vel juramento*, that he allowed his wife to take drink from any persons that would furnish her; and that he knew Ker, the pursuer, did furnish her after the inhibition, and yet that he did not discharge him nor interrupt; which being proved, found him liable in the price of the ale pursued for. But some thought, if he was *lucratu*s by it, he was in that case obliged, as being *in rem versum*. If she had gone to a merchant's shop and taken off clothes, the inhibition would have cut off the merchant, if the husband proved that he had furnished her sufficiently conform to her quality; but his allowing her to sell ale in his own view is a quite different case.

Fountainball, v. 2. p. 510.

1747. July 22. AGNES CARSE against ALEXANDER BURTON.

No 234. A man found entitled to inhibit his wife, who had separated herself from her family, on account of mal-treatment, altho' she had, while in the family, behaved with propriety.

ALEXANDER BURTON having executed an inhibition against Agnes Carse his wife, she applied by petition for having the further execution and recording thereof stopped, for that the same was without cause, she having behaved herself dutifully, while she lived in his family, and which she had not quitted till obliged to it by his having beat and abused her in an unmerciful manner, for which she had raised a process of separation and aliment. *2do*, That it contained many scurrilous, false and injurious expressions, to the great hurt of her character.

On moving this petition, some of the Lords doubted, whether or not in general, a man was at liberty without a just cause assigned to inhibit his wife; but there was no occasion to consider the general point, in respect it was acknowledged in the petition, that she had separated herself from her husband's family; in which case all agreed that it was competent for him to inhibit her.

And accordingly the LORDS "refused the petition, so far as it prayed to have the inhibition recalled; but appointed it to be seen and answered as to the injurious expressions."

Fol. Dic. v. 3. p. 284. Kilkerran, (HUSBAND AND WIFE.) No 12. p. 265.

* * * D. Falconer reports the same case :

No 234.

AGNES CARSE gave in a petition, shewing, that on the bad usage given her by Alexander Burton her husband, she had been obliged to leave his family, whereupon he raised inhibition against her, inserting in the letters several injurious allegations ; for which she prayed the inhibition might be discharged to be recorded.

“ THE LORDS declared their opinion, that a man might at his pleasure inhibit his wife, but ordered the petition to be answered, with regard to the harsh expressions contained in the narrative of the inhibition.”

D. Falconer, v. E. No 201. p. 273,

1747. November 11. The COUNTESS OF CAITHNESS against The EARL.

THE Countess of Caithness pursued a reduction of an inhibition, which the Earl her husband had used against her, on two grounds ; *imo*, That the inhibition was of an extraordinary stile, and calculated to blacken and injure her character ; *2do*, That as the facts therein set forth were not true ; so without relevant grounds, it is not competent for a husband arbitrarily to inhibit his wife.

In the reasoning on this point, some of the LORDS carried the matter so high, as that a husband could not be admitted to deprive his wife of her *præpositura* in family affairs, unless he could condescend upon such grounds for doing it, as might satisfy the Court of her misbehaviour ; such they thought the effect to be of that *individua vitæ consuetudo*, from which the wife's *præpositura* arises.

Others in part agreed, but did not carry it quite so high : They thought that if the husband should settle a fund for the aliment of the family, he may, *quoad ultra*, inhibit her ; but unless such sufficient fund were settled upon her, either for the maintenance of the family, or as a separate aliment, it would be unreasonable that he should have it in his power arbitrarily to inhibit her. But the more general opinion was, that how much however it may be more decent and prudent for a husband to continue the management of his family affairs with his wife, yet, in point of law, there was nothing to hinder the husband to take the management and administration into his own hands ; and that even in point of expediency, the argument for the wife had a double edge ; for that it might be attended with great inconveniencies, and even dangerous consequences, should the husband be obliged to explain his reasons for his taking the management out of his wife's hands : Many instances happen of differences between man and wife, which are afterwards made up, but which could never be made up after a husband had proposed his reasons.

No 235.

The Lords repelled the reasons of reduction of an inhibition against a wife, that the facts set forth in it were not true, and that the stile of it was calculated to asperse her character, but ordered the injurious expressions to be struck out.