

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

bond or contract, or the dependence of a process, but only upon a bill and desire of the husband, *sine causa cognitione*; and it were hard, that merchants, when persons and Ladies of quality come to their shops for buying their ware, should go to the registers and try whether they be inhibited; but these points were not decided.

No 232.

Dirleton, No 264. p. 127.

1709. July 5.

ARCHIBALD KER, Brewer in Edinburgh, *against* NICOL GIBSON, Ferrier and Smith there.

No 233.

A wife was allowed to receive ale from brewers, with her husband's knowledge, after an inhibition executed against her by him. This found relevant to make him liable to the brewers for the price of the ale.

IN the action at the instance of Archibald Ker, against Nicol Gibson, for payment of ale furnished to the defender's wife, and sold by her in his dwelling-house,

Alleged for the defender; He could not be liable for any ale taken by his wife, in respect she stood inhibited at his instance.

Replied for the pursuer; He was *in bona fide* to furnish ale to the defender's wife after the inhibition, as he had done before, not being specially interpellated or discharged by the defender, whose allowing his wife *exercere tabernam*, to keep an ale-house after the inhibition, was a tacit passing from the same.

Duplied for the defender; Inhibitions at the instance of a husband, against his wife, need only to be executed at the market cross, and are not to be intimated to every particular person. Nor can such solemn registered writs be taken away, but by as solemn a discharge, or renunciation thereof in writ.

THE LORDS found it relevant to make the defender liable, that his wife was allowed to tap and receive in ale after the inhibition; and that it consisted with the husband's knowledge that she received ale from the pursuer, and found the allegiance probable by the husband's oath.

Fol. Dic. v. 1. p. 404. Forbes, p. 339.

* * Fountainhall reports the same case :

ARCHIBALD KER having furnished several scores of barrels of ale to Nicol Gibson's deceased wife, he pursues him for payment. *Alleged*, I cannot be obliged to pay it, for she is inhibited at my instance to contract any debt, and which was duly executed, published and registered, and so was sufficient to put the lieges *in mala fide* not to trust her. *Answered*, As the inhibition was never intimated to me, so you allowed her to take in ale, and to tap and retail it in your own house, and in your own view, which was a tacit renouncing and passing from the inhibition, which would otherwise be a gin and a snare to intrap innocent people to furnish drink to her, and then you to obtrude the inhi-