

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-

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.