her oath, or by famous witnesses, and so he was *in tuto* to pay her. This being reported, the LORDS 'found her husband's approving of her intromission by once or twice uplifting is not a sufficient ground, neither is use and wont enough, whereupon his payment to her may assoilzie him, unless she had been a shop-keeper or a taverner. And, *2do*, Find that a wife's prepositation in a matter of this concern must not be proved by her oath, but must be only proven *scripto*; and that she behoved to have had a written factory.' No 221.

Fol. Dic. v. 1. *p.* 403. *Fountainhall, v.* 1. *p.* 99.

*** This case is reported by Stair, No 14. p. 1669.

1698. *November* 19. ARNOT *against* STEVENSON.

No 222.
An apprentice, who was bound, not by his father, but by his mother, deserted after two years service. In a pursuit against the father, for the remainder of the apprentice-fee, (the mother having paid part of it,) it was found that the *præpositura* could not be extended to such deeds, and that the father's knowledge and silence could not infer consent.

IN a pursuit at the instance of Archibald Arnot, apothecary in Kirkcaldy, against one Stevenson, for payment of 100 merks yet resting of his son's apprentice-fee, and for damages through his running away and deserting his service; there being no written indentures, he offered to prove by the defender's oath, that though he did not bind his son apprentice to the pursuer, yet his wife, who did, was *præposita negotiis mariti*, which was sufficient to bind him to fulfil. He depones, That his wife did indeed buy and sell and take in the money, but he never gave her the power of binding or loosing; and particularly, he was dissatisfied with her putting his son apprentice to this pursuer. When this oath came to be advised, it was *alleged*, That the boy had staid two years with his master in his father's view, who never reclaimed; which taciturnity must imply an acquiescence and homologation of his wife's bargain; and there was 100 merks of the apprentice-fee paid.——THE LORDS considered it was not the husband but the wife who had paid that 100 merks; and that a man may be silent at the management and actings of an imperious wife, and yet must not be construed to approve of the same, else she may bring him into inconveniences enough; and therefore they found her præpositation *quoad* the power of binding her son apprentice not proved, and assoilzied the husband; seeing it was easy for the master to have entered into a written contract with his apprentice's father; and since he did not, *sibi imputet* that he has followed only the mother's faith, who should not dispose of their children's callings and educations without the father's consent.

December 1.—A BILL having been given in against the interlocutor mentioned 19th November 1698, between Arnot and Stevenson, *alleging*, That he had alimented the apprentice for two years, for which he had only received 100 merks, and this being *in rem versum* to the father, who was bound *jure naturæ* to entertain his son, he must be liable for the remanent apprentice-fee.—It was *answered*, He had the boy's service, which might compense the aliment.—

No 222. *Replied*, An apprentice's service is little beneficial the two first years; for then the master is at the greatest trouble in teaching him the mystery of his trade. ——The Lords would not give it as apprentice-fee, but allowed the 100 merks by way of aliment, the father being thereby *lucratus*.

Fol. Dic. v. 1. p. 403. *Fountainhall, v. 2. p.* 16. & 21.

1711. *December* 26.

Robert Brown in Balleny, *against* Adam Dickson, Merchant in Dumfries.

No 223. Robert Herries's wife having, in her husband's absence, sold to Robert Brown certain goods belonging to her husband, in payment of a debt owing by him to Brown, whereof Brown delivered up the instructions, with a discharge to the wife in name of her husband, at getting the goods; and Herries having never after his return reclaimed against delivery of the goods, nor sought them back; the Lords, in a process at the instance of Robert Brown against Adam Dickson, found, That the property of the goods was thereby effectually transferred from Herries to Brown, and could not be affected by legal diligence at the instance of Herries's other creditors; in respect the husband's silence and detaining the writs delivered to his wife necessarily imported ratihabition and acquiescence in what she did.

Fol. Dic. v. 1. p. 403. *Forbes, p.* 563.

1740. *July* 22. Cochran *against* Lyle.

No 224. Found, That in those affairs in which the wife is *præposita*, her oath is probative of furnishings; not as the oath of a witness, but as of a party.

Fol. Dic. v. 3. *p.* 283. *Kilkerran*, (Husband and Wife.) *No* 4. *p.* 257.

*** See Young and Trotter against Playfair, *voce* Proof.

No 225. 1748. *June*. Parkhill *against* Batchelor.

Money lent by the wife is presumed to be the husband's.

Fol. Dic. v. 3. *p.* 283. *Kilkerran.*

*** See this case, No 90. p. 550.