

\* \* \* 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.

No 235.

In other countries, the practice is for the husband to interpel this or that particular person from trusting his wife; and he is not obliged to assign any reason for it: The form with us is better devised, to interpel all and sundry by an inhibition on public record; and there is nothing in the different form which we use, that requires that the husband should justify that inhibition, more than if it were an interpellation to this or that particular person. So far it is true, that should the husband go out of the common road, and throw into his bill of inhibition injurious expressions, these ought to be struck out. But that will not reduce the inhibition, more than it would reduce an inhibition against a debtor, that it proceeded on a variety of debts, whereof some happened to have been formerly paid. And accordingly the LORDS 'repelled the reasons of reductions; but remitted to the Ordinary to hear how far any of the expressions in the inhibitions were injurious, with power, if any such were, to order the same to be struck out.'

*Fol. Dic. v. 3. p. 284. Kilkerran, (HUSBAND AND WIFE.) No 13. p. 266.*

\* \* \* D. Falconer reports the same case:

THE Countess of Caithness pursued a reduction of an inhibition, raised against her by the Earl her husband, as groundless, she having shewed no disposition towards extravagance, and as containing several false and injurious aspersions on her conduct.

After some debate on the competency of the action, the production was satisfied, and the LORD ORDINARY, 12th July 1745, reduced.

*Pleaded* in a reclaiming bill, That by law the government of the family belonged to the husband, and he might commit it to whom he thought proper; that the foundation of his being liable for his wife's contractions, was a presumption he had committed it to her, which *præpositura* he might put an end to when he pleased, and was not obliged to assign any reasons for so doing; nor could the effect of his deed depend on the reasons he happened to assign: That in this and other countries a man might forbid any particular person to contract with his wife, and the prohibition would be valid; and the only further effect of an inhibition received in our law was, that it made the prohibition general; that the terms made use of in this inhibition were softer than was usual, but yet if any were thought injurious to the Lady, they might be delete out of the record; the Earl was satisfied, if he were secured against his Lady's contractions.

*Answered*, That the foundation of the wife's power of contracting, was the communion of goods; and the husband could not deprive her of her share of the government of the family without just ground; but this was not the present question, the inhibition quarrelled was founded on the allegations made therein, and if these were false, behoved to be reduced; the Earl might after-

wards inhibit his Lady on his prerogative, and it would then be the proper time to dispute that point. No 235.

*Replied,* The reducing this inhibition would expose the Earl to the debts of the Countess, contracted since it was raised.

THE LORDS, 11th November, 'repelled the reasons of reduction, but remitted to an Ordinary to consider the inhibition; and in case he observed any injurious reasons contained therein, that he should order them to be struck out of the inhibition, as also out of the record of inhibitions.'

THE LORDS refused a bill, and adhered.

*Act. W. Grant & Lockhart.*

*Alt. H. Home.*

*Clerk, Gibson.*

*D. Falconer, v. I. No 209. p. 289.*

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## DIVISION VII.

After Proclamation of Banns, the Woman considered to be in the same case as if actually Married.

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### SECT. I.

What Proclamation Sufficient.

1623. July 8.

M'DOUGAL *against* AITKIN.

JANET STUART, relict of James Stuart, called of Jerusalem, by her bond given to John Aitkin litster in Edinburgh, as cautioner for her father, is bound to pay as cautioner foresaid, the sum of 500 merks; this bond is desired to be reduced at the instance of Andrew M'Dougal her second spouse, upon this reason, because the same was made by her, after she was contracted in marriage with the said Andrew, and after the bonds of marriage were proclaimed in the parish church of the Inch, in the west country, which was the said Andrew the pursuer's parish church, so that after that contract and proclamation, she could do no deed that might prejudice her, or the pursuer, now her husband, with whom

No 236.

A gratuitous bond by a woman, after the banns were proclaimed in the church of the parish where her future husband dwelt, was sustained, because it was executed six