

1698. July 5. The EARL of SUTHERLAND *against* The VISCOUNT of ARBUTHNOT.

ARBUTHNOT of KNOX, when served tutor-of-law to his nephew, the Viscount of Arbuthnot, gave a bond to the Earl of Sutherland, the grandfather, to count yearly, and for sundry other prestations ; and Sir Thomas Burnet of Leyes became cautioner for the performance.

Lord Sutherland craving, by bill, this bond to be given up to him by the clerk, to the effect he might registrate it ;---it was ANSWERED, They were content, providing it were only *custodiæ causa*, or for conservation ; but to raise inhibition upon it (as the Earl intended,) was invidious. REPLIED,---A party cannot be hindered to make what use of his evidents the law allows him ; *Qui jure suo utitur nemini injuriam facit* : And whereas it is craved that he should condescend on the grounds and infractions of the said agreement, seeing, if it be not contravened, it were malicious to make it the foundation of an inhibition, which is infamatory of itself ;---it is ANSWERED,---That parties cannot be forced to condescend, but may use what diligence they please upon their peril ; and, what if thir parties should put their sons in fee of their lands ? May there not be reason to prevent it by an inhibition ?

The Lords thought the stopping of diligence like the stopping the circulation of the blood ; therefore allowed the Earl to make what use he thinks fit of the said bond, when registrate, as he will be answerable ; for, if it should be wholly groundless, the Lords might then redress it, or burden it with expenses.

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1698. July 5. FERGUSON *against* CHARLES WILSON.

FERGUSON, merchant in Montrose, gives in a bill, representing, That he had obtained a decret *in foro* against Charles Wilson, skipper in Musselburgh, for £675, and which he had twice suspended, and always suffered protestations to pass against him, whereby he had put him to near £100 Scots of expenses ; and therefore craved, That, besides the protestation-money settled by law, the Lords would coerce this contentious procedure, and give him the expenses contained in his account given in, he deponing upon the verity thereof.

The Lords, without giving the bill to answer, considered, where the law has set down and determined the penalty, by specifying a particular sum, there was no latitude left for judges either to exceed or go beneath that quantity, but the statute must be precisely followed ; and the Lords have no *arbitrium* thereupon ; and for this cause the Lords refused the bill.

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1698. July 8. JOHN BURGAN, and CHRISTIAN DICK, his Spouse, *against* KER and GEORGE FLEMING.

JOHN Burgan, wright, and Christian Dick, his spouse, having pursued Ker,