

. Fountainhall reports this case.

No 3.

January 6. 1709.—Dame Heleonora Nicolson pursues Sir John Shaw of Greenock, her son, in a process for payment of her bygone jointure; and having called her summons, and an advocate being marked, she gave out her process to him to be seen, who returns it back to her doers, without a return in writing on the back of it; for want whereof she could not get it enrolled, and so requires him by a notary before witnesses to give her a return in common form, which he refused, in regard Sir John having gone to attend the Parliament as a Member in the House of Commons, he was *absens reipublicæ causa*, and not obliged to answer in any process. Upon this, my Lady gave in a bill, craving, that his advocate might be ordained to give a return of her process, to the effect she may get it enrolled; and, in case of his refusal, to cause enrol it of the date of the instrument and protest taken against him. *Answered* for Sir John Shaw, He opposed his privilege, which secured him against any procedure, either in form or matter till his return; and the law, by the regulations 1695, had provided a remedy in this case, where none appeared for a defender in a process to crave a sight, it was a summons in absence to be enrolled in the regulation-roll, which my Lady might do; and no sort of interlocutor can be pronounced against him during his attendance of the Parliament. The design was to stop its enrolment till the summer-session, and then it could not come in by the course of the roll till November 1709, and then his Parliament privilege revived; and if he had interest to get himself chosen to the next triennial Parliament again, he might postpone and delay her long enough. *Replied*, It was time enough to found upon his privilege, when my Lady insisted in her cause. All she craved at present was only the *initialia et præparatoria judiciorum*, which neither infringed nor encroached on his privilege, if he had any; and when she craved a decret, then was the season to propone his exception, as *impeditiva litis ingressus*, I am not bound to answer, because I am a member of Parliament. Some of the Lords doubted if there was any such privilege competent, for it is certain, when we were an independent sovereign kingdom by ourselves, the members of the Scotch Parliament had no such privilege. THE LORDS, by plurality of six *contra* five, found this defence not receivable *hoc loco*, and that the privilege could not extend to this case; and therefore ordained the cause to be enrolled of the date of the instrument.

Fountainhall, v. 2. p. 478.

1709. November 15. GEORGE LIVINGSTON against MORISON of Prestongrange:

IN the action at the instance of George Livingston against Prestongrange, the LORDS sisted process against the defender, as being a Member of Parliament, al-

No 43

No 4.

beit he was not yet attending the Parliament; in respect the Parliament was sitting, and he claimed his privilege, and represented that he was under the necessity to go and attend it.

Fol. Dic. v. 1. p. 572. Forbes, p. 353.

* * * Fountainhall reports this case.

LIVINGSTON having been a partner in the glass-manufactory at Morison's Haven, and their treasurer, he advanced and debursed, for the use of the society, L. 1275 Scots, and pursues Prestongrange, as he who had acquired all the shares, for payment of the balance of his account; and he refusing to answer at this time, in respect of his privilege as a Member of the British Parliament, and just going away for that end, it was *objected*, The Parliament not being yet set down, his privilege took no place. *Answered*, They had the allowance and interval of 14 days before their sitting, and as much after, for their going and coming, so his privilege was already commenced and existing. Some moved the question, whether a Member not going, but staying at home, could claim his privilege, as if he were actually attending? It was argued on the one hand, that the privilege was given in respect of their absence, as absent *reipublicæ causa*, and not to divert them from attending and giving advice in the public affairs of the nation; but if they did not go to Westminster, but staid at home, the cause of the privilege ceased, *et cessante causa privilegii cessare debet effectus*. It was reasoned on the other side, that he behoved to be once received in the House, and sworn as a member; but after that, if he was absent, it did not deprive him of the privileges annexed to the said office and trust, but made him only liable to, and censurable by, the Parliament for his withdrawing. THE LORDS waved this point, in regard it was informed he was actually going to London to attend the Parliament. Some thought this privilege a great remora and stop to the administration of justice, seeing it is pleaded not only to extend to the 61 members from Scotland, but to as many servants as they please to take with them: so that bankrupts have no more to do for protecting their persons, but to get themselves listed by collusion under the name of their attendants.

Fountainhall, v. 2. p. 526.

No 5.
A Member of Parliament allowed to claim his privilege to stop process against him, although he sisted himself *in initio litis*,

1710. February 17.

Captain HENRY BRUCE against Mr WILLIAM DALRYMPLE of Glenmuir, and ALEXANDER INGLIS.

IN the action at the instance of Captain Bruce against Mr William Dalrymple and Alexander Inglis, mentioned December 23. 1709, *voce* PART and PER-TINENT, the LORDS allowed Mr William to claim his privilege of a Member of Parliament, to stop process, albeit he had sisted himself *in initio litis*, and pro