

1711 and 1712. SIR ROBERT HOME of RENTON *against* SIR PATRICK HOME, Advocate.

[See the numerous prior parts of the Report of this Case pointed out in the Index to the Decisions.]

1711. *November 21.*—THERE having been bills given in by Sir Patrick Home, and Sir Robert his nephew, complaining of several interlocutors passed, as they thought, to their prejudice, (in the case mentioned *supra*, 17th December 1708 :) and the Lords having appointed a hearing to put an end to that tedious and expensive process ; after some debate, Sir Patrick, diffident of the event, withdrew, and refused to appear, though called. Whereon the Lords proceeded to advise the bills and answers ; though it was alleged they were without the six days, contrary to the Act of Sederunt. Yet the interlocutor being pronounced before the Act, the Lords thought they were sufficiently warranted to advise the bills ; and accordingly found that Sir Robert's being heir-male and of provision to his father, Sir Alexander, did not oblige him to warrant his disposition of the lands and barony of Renton to Sir Patrick, nor the discharge he gave him of his intromissions and omissions ; these deeds being destructive of the tailyie ; unless Sir Patrick prove an equivalent onerous cause of the said two rights made to him ; and found, that his accepting the tack set to him by his father, did state him so in the trust, that he could not accept of the said disposition and discharge : and therefore ordained him to count and reckon. By which interlocutor Sir Patrick conceiving himself aggrieved, he gave in his protest for remeid of law to the British Parliament. *Vol. II. Page 675.*

1712. *February 5.*—Sir Patrick Home, advocate, procured a warrant from the House of Peers, to cite Sir Robert Home of Renton, his nephew, to compare before them on the 15th of February, by himself or his attorney, to see the appeal and protest, made by the said Sir Patrick, *supra*, 21st November 1711, discussed ; and which he caused serve, by executing the same personally against the said Sir Robert. And both of them did take their journey to London, (though in the midst of winter,) to see it prosecuted, to their vast trouble and expense. *Vol. II. Page 718.*

June 28.—Sir Robert Home pursuing Sir Patrick his uncle, for count and reckoning of his intromissions with the estate of Renton ; and Sir Patrick having appealed from sundry interlocutors, and the House of Peers having confirmed them, and rejected the appeal, Sir Robert raises an inhibition upon the depending process, and executes it on the 18th and 19th of June, and gets it registered in the Sheriff-court books of Berwick. Sir Patrick gives in a bill to the Lords, complaining of this procedure, as precipitate, irregular, and malicious ; in so far as though inhibitions may be raised on depending processes, yet where they are obviously extravagant, and libelled at random, without any probable documents and instructions to convince the Lords of their integrity and justice, they ought never to be granted. And now to subsume and apply, there was never an inhibition craved on so general and illiquid grounds ; for though Sir Patrick has not only a disposition from his brother Sir Alexander

for most onerous causes, and a discharge of his intromissions in 1694 ; but likewise has an undoubted right to the lands by legal diligence of adjudications, far above the value,—yet they conclude against him for payment of more than 200,000 merks they say he is debtor in, after all his acclaimed debts are paid ; which is so ridiculous a libel that no judicatory in Europe would allow inhibition to pass for such a sum. And there is nothing more ordinary than for the Lords, in such random demands, either to stop the inhibition *in totum*, or to restrict it to what has some shadow of probability : whereof many instances can be given ; as in the *late Duke of Hamilton's case* against *Hamilton of Wishaw* ; and the *late Earl of Home* against *Sir John Hall of Dunglass* ; and *Patrick and Sir John Houstons* against *Sir Robert Dickson of Inveresk*. And *Stair, lib, 4, tit. 50*, tells,—If any represent a just cause to stop inhibitions, the Lords use to do it ; and particularly in the following cases :—If it be sought on remote grounds against a merchant, which may weaken his credit ; if by a wife against her husband, or children against their parents ; or against persons of great estate and dignity, on small and obscure claims, where their quality and solvency excludes all suspicion ; or where it is sought on bare assertions, without probable documents. And there was never less reason for inhibiting than here.

ANSWERED,—It is calumnious to obtrude malice ; for *qui jure suo ulitur ne-
mini injuriam facit* ; and Sir Patrick's procrastinating this plea, these thirty years bygone, sufficiently justifies their procedure ; for *damnum quod quis culpa sua
sentit sentire non videtur*. And, as to his onerous causes, all they crave is to have them brought to light ; for, laying by Sir Patrick's ill-instructed schemes and wrong arithmetic, he'll be found greatly debtor in the event of the count and reckoning. And, where can be the prejudice to inhibit you, who have been my trustee and administrator, and you refuse to count ? If I were pursuing a tutor or curator, or my factor, and inhibited him on the dependence, with what countenance would he seek to stop it, because they have made their accounts intricate and involved, and seek to cover their effects and estate into third hands, and oppose the count to the last extremity ?

It was started by one of the Lords, that there having been an appeal in this cause, that stopped all procedure, till it were shown to the Lords that it was discussed ; and therefore it was unwarrantable in Sir Robert to raise inhibition, till he had produced the order of the House of Peers dismissing the appeal. Others argued, that these protests for remeid of law, when tabled, stopt execution, as poiding, horning, &c. but not legal diligences by inhibition or arrestment. But the Lords not having yet named a new auditor in place of Blairhall deceased, they stopped the booking the inhibition (for it was registrate,) for eight days, till an auditor shall be named : to whom probably they would remit the complaint and answers about the inhibition, whether it should be recalled, restricted, or not ; and how far it was legal or unwarrantable ; or to

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1712. July 5. A. BYRES against MAJOR DOUGLAS of MORTON.

ALEXANDER Byres having a wadset on Major Douglas of Morton's estate, for