

S E C T. II.

Inhibitions pass *causa cognita*.

1543. July 11. JOHN MAXWELL *against* LAIRD OF TEELING.

LETTERS of inhibitioun may not be gevin aganis ony Erle, Lord, or Baron, be the Lordis, without ane sufficient and just cause, because the samen is hurtful to mens fame and honour. And mairover, na persoun sould be stoppit in the administratioun of his gudis and geir, without ane lauchful and sufficient cause.

Fol. Dic. v. 1. p. 472. Balfour, (INHIBITION.) No 1. p. 476.

. Sinclair reports this case :

1543. July 31.—THOMAS MAXWELL of Teeling alleging that Thomas Maxwell, portioner of Gilgour, was owing to him great debts, and intended to pursue therefor; and that he, in his defraud, intended to annalzie his lands and goods in the mean time, therefore he got the King's letters, inhibiting the said John to annalzie his lands and goods in defraud of him his creditor; and also, that none of the King's lieges should contract, buy, or sell, with the said John, in defraud of the said Thomas his creditor; which letters were given upon false narration, because the said John was owing him nothing that he could show to the Lords; the said Robert asked to be reduced and suspended simpliciter for the causes foresaid;—THE LORDS decerned the letters suspended simpliciter, *et quia libera dispositio rerum suarum non est alicui, interdicenda sine causa, et quia tales literæ sunt quodammodo defamatoriæ, ideo sine causa non concedendæ.*

Sinclair, MS. p. 54.

1543. July 12. The QUEEN'S ADVOCATE *against* The EARL OF CRAWFORD.

No 72.

THE Queen's Advocate asked letters, by deliverance of the Lords of Council, to make inhibition to the Lord Crawford, to sell or annalzie any lands, or reversions of the said Earldom; and also, that none should contract thereupon in defraud of the Queen, and that, because he was obliged to reserve to the King, and his heirs, and him or them, all the reversions, how soon he were by him or them required; and, for the doing whereof, he was now under summons at the Queen and Governor's instance.—THE LORDS, of long disputa-

No 71.
Inhibition should not be granted against an honourable person, with a sufficient cause.

No 72.

tion, delivered the said letters against him; notwithstanding that such Lords and great Barons (are said to be privileged), *quia videbantur tales literæ quasi defamatoriæ, ut ipsi allegebant*; but the mair party of the Lords said nay, for they were conform to the practique and common law; and therefore no man should think him hurt or defamed where there is nothing against him done but by law and reason.

Fol. Dic. v. 1. p. 472. Sinclair, MS. p. 54.

No 73.

The Lords prohibited registration of an inhibition till trial were taken what ground there was for it.

1699. February 15.

JOHN MURRAY *against* AGNES KELLO.

MR JOHN MURRAY, commissary of Peebles, advocate, gives in a complaint, that Agnes Kello, relict of Scot of Broadmeadows, (whose daughter he had married, and she was deceased without children,) now spouse to Brown of Legertlaw, had served an inhibition against him upon a dependence for her jointure, and which was most malicious, she being absolutely secured in her liferent lands, and that the Lords have been in use to stop such unjust attempts, especially inhibitions incumbering mens' estates, and likewise touching their fame and reputation. *Answered*, Diligences ought to have a free course; and to stop these were as great a failure in the administration of justice, as the stopping the circulation of the blood at the *vena cava* threatens a distemper in the body; and the said Mr John has a right to these lands, and so must be liable.—THE LORDS remembered they have oft interposed where inhibitions are groundless, (as in Stanhope's case against the Lady Kincardine and others*) therefore they discharged the registration of it till it should be tried what ground there was for it.—THE LORDS took the same method this session about an inhibition served by one Govan against Mr John Frank, advocate. See Stair's Instit. b. 4. tit. 50. where he treats of malicious inhibitions.

Fol. Dic. v. 1. p. 472. Fountainball, v. 2. p. 44.

1704. February 23.

Countess-Dowager of CASSILIS *against* The Earl of CASSILIS, and his Tutor.

No 74.

Found in conformity with the above.

THE Countess-dowager of Cassilis, by her contract of marriage, being provided to a liferent of L. 400 Sterling *per annum*, and the rent falling the one half short, she raises a process against the present Earl of Cassilis, and the Earl of Ruglen, his tutor, to implement, warrant, and make up the deficiency; and in regard the tutor was selling land to pay off the debt, she raised and executed an inhibition against them to stop the sale; upon which a bill is given into the Lords by Cassilis and his tutor, representing, that the Lord Kennedy, his father, was publicly infest in the estate, before his grandfather entered into that contract-matrimonial with the present Countess-dowager, and so could never bur-

* Examine General List of Names.