

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.

den him with her jointure ; and yet she had most groundlessly raised that process against him to implement his grandfather's deed, whom he nowise represented, but was in the fee before she was so much as a creditor ; and she had thereon served an inhibition of design to stop the sale of the lands for payment of his debts ; and therefore craved the registration of the said inhibition might be discharged as wholly groundless and malicious.—THE LORDS considered, that the stopping of the course of law, by inhibition or other diligences, was like the shutting up the *vena porta*, and circulation of the blood, and the free passage and administration of justice ; yet, in sundry cases, they had examined the grounds of such diligences, and if they find them more founded on humour than reason, they have been in use to refuse the same ; and the Lords, in this case, discharged the registration till they considered the causes on which it proceeded ; and after trial they found this inhibition abusive and unwarrantable.

Fol. Dic. v. 1. p. 472. Fountainhall, v. 2. p. 226.

No 74.

1706. February 9.

JEAN WISHART Petitioner.

JEAN WISHART, wife to James Guidshire in Kennoway, gives in a petition, shewing, that her husband had deserted her ; and, being wrong in the head, run up and down the country, contracting debts, and left her and five poor children destitute of all subsistence ; and, if he were not restrained, would in a short time render them miserable ; and she had craved from the clerk of the bills an inhibition on her contract of marriage, (which bore no persons at whose instance execution should pass), which he declined to do without a special warrant ; and she requested the Lords to pass it. It being appointed to be seen, and no answer made for the husband, the Lords desired some farther information of the matter of fact ere they would pass the inhibition ; whereon she produced an interdiction granted by him in 1701, whereby he obliged himself to grant no bonds without her consent ; which the Lords thought contrary to the principles of nature, to subject a man to his wife, who was to be directed and ruled by him, conform to the divine laws ; and thought it might be a remedy out of time if they remitted her to pursue it by way of process ; therefore they referred it to the Ordinary on the bills to take a summary trial and cognition of the husband's circumstances, and if he found them extravagant, then to pass her inhibition, as had been lately done to Campbell of Carrick's daughter, and Maclure's*. See Stair, Tit. Conjugal Obligations, and Durie, 13th July 1638, Lady Glenbervy, No 261. p. 6053.

Fol. Dic. v. 1. p. 472. Fountainhall, v. 2. p. 325.

* Examine General List of Names.

No 75.

A wife craved inhibition against her husband on her contract of marriage, on account of his extravagance. The Court remitted to the Ordinary to take a summary trial of the husband's circumstances, and if he was found extravagant, to grant inhibition.