

1722. *November.* Competition of the CREDITORS of TOFTS.

No 40.
An inhibition on a dependence sustained, tho' not special as to the sum or ground of debt on which the process was raised.

IN the competition of the Creditors of Tofts, the following objection was made against an inhibition, at the instance of Susanna Belsches of Tofts, viz. That it being served upon a dependence, did not mention that the conclusion of the libel was special as to the sum or ground of debt, for which the process was raised; which it ought to have done, in order to ascertain the lieges of the extent and import of the diligence; otherwise it would be in the power of a malicious creditor, by an inhibition upon any small sum, to disable the most opulent person of all manner of commerce; seeing the creditor being master of the principal summons, on which the inhibition proceeds, it is impossible to be apprised of the extent of the debt, or condition of the debtor; and this inconvenience may continue for many years, seeing a depending action may be preserved for 40 years, by a wakening every seven years; and although the same did terminate in a decret, the discovery even in that case, would be attended with difficulty, the records of the Session being appointed for execution or conservation, not for publication.

It was *answered*, There are many processes, wherein a definite sum cannot be condescended on in the libel; such as counts and reckonings, &c. no body doubts, that such summons may be relevantly libelled in general terms; and indeed in such it is more reasonable to lay the claim in general, than to libel at hazard great sums, when upon a disquisition, there may only remain a small balance. As this way of libelling is admitted in practice, and most justifiable in itself; and since the law allows inhibition upon every depending action, the inhibition must receive its form and shape from the action whereon it is founded, which, in the present case, was a count and reckoning against a tutor. And if debtors think this sort of diligence a hardship, they have an easy remeid, by a proper application to the LORDS, from whom they will obtain either a liquidation or restriction of the sum for which the inhibition is served.

'THE LORDS sustained the inhibition.'

Fol. Dic. v. 1. p. 472. Rem. Dec. v. 1. No. 36. p. 73.

1724. *July 14.* JOHN LEES *against* ALEXANDER ALISON.

No 41.
It is not a relevant objection to an inhibition, that it proceeded on a precept in a contract registered in a Bailie-court.

IN an action of reduction at the instance of Lees against Alison, *ex capite inhibitionis*, there was an objection made against the inhibition, that it proceeded upon a precept, raised upon a contract registrated in an inferior Bailie-court, which was no sufficient ground for an inhibition, seeing precepts of an inferior Judge are not regarded, nor a sufficient warrant of personal actions for a sum exceeding L. 40 Scots, far less of an inhibition.

It was *answered*, That the precept was from a Judge who was competent to decern in the sums contained in the registrate contract, upon which the precept followed, and the LORDS having interponed their authority to the inhibition, their deliverance made it a sufficient ground; so that the debt to which Mr Alison had right was contracted *spreta auctoritate*.

No 41.

THE LORDS repelled the objection proponed against the inhibition.

Reporter, *Lord Cullen*.Act. *Falconer*.Alt. *Gardah*.Clerk, *Gibson*.

Fol. Dic. v. 3. p. 320. Edgar, p. 79.

1725. July 8.

McLELLAN *against* ALLAN.

No 42.

INHIBITION being used by a creditor against a debtor who was cautioner in a bond to another creditor; and he having granted a bond of corroboration of his cautionary obligation, after the lapse of the seven years; it was found that the inhibition cut off the effect of this corroboration; for the cautioner being once free by prescription, could not revive the debt in prejudice of the inhibition, more than he could contract a new debt.

Edgar.

* * * This case is No 61. p. 4967. *voce* FRAUD.

1727. June.

Competition CHARLES ROW with the other CREDITORS of RUSCO.

No 43.

It was objected against an inhibition, that there was nothing in the letters prohibiting the lieges to lend their money to the person inhibited, and to take bond or security therefor; that upon that account the inhibition could not strike against posterior bonds, though by these the heritage might be evicted. THE LORDS sustained the inhibition good against these bonds, in so far as they might affect the heritage, in respect of the general clause 'inhibiting and discharging the lieges, under whatsoever colour or pretext to buy, block, or receive any other manner of way, from the debtor, any of his lands, heritage, &c. in defraud foresaid.' See APPENDIX.

Fol. Dic. v. 1. p. 472.

1739. February 1. CARLYLE *against* the TRUSTEES of MATHISON'S CREDITORS.

No 44.

WHERE the bulk of a bankrupt's creditors had agreed to accept of a voluntary right from the bankrupt in favour of a trustee, who, to save expense, should