

rumour was not wholly groundless, appears from thir circumstances :—that Coline, the husband, deserted her company for some time on this same report ; and that she is presently before the Presbytery, where things very indecent are already sworn against her.

The Lords remembered that *veritas convitii non excusat a convitio* where it is done *animo injuriandi* : But this proceeded neither from petulancy or malice, but only to inform himself when, *necessitate juris*, he was called to depone what crimes he knew in his parish : and so the Lords thought the commissary had committed gross iniquity ; and therefore passed the suspension, and reserved, to the conclusion and discussing of the cause, what such particularity deserved.

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1708. *November 23.* DRUMMOND of INVERMAY *against* The MARQUIS of ANNANDALE.

DRUMMOND of Invermay pursues the Marquis of Annandale for £2400 owing by his predecessors to Stewart of Rosyth, whereunto he has right ; and the Marquis having instructed that they were only cautioners for the Earls of Home, and alleged that the debt, in whole or in part, was paid by the principal debtor ; and having got a diligence for recovery of discharges, he produced some for several years' annualrents ; and these having been allowed, decret was extracted for the remainder. But having suspended, that his case was most favourable, being the heir of a cautioner, and that there were many more discharges lying in the Earl of Home's charter-chest, if he had the persons condescended upon examined ; which was granted : and a further compulsitor being craved against the Earl of Home, for searching his papers more exactly :—The Lords found, That our law knew no other compulsory but first and second diligence by horning and caption ; both which he had got often.

Then it was ALLEGED for the Marquis,—That the cause must sist ; because he was absent *reipublicæ causa* ; in so far as, in the election of the sixteen peers, in June last, he had protested against the hability and capacity of sundry of the voters ; and, if his objections be sustained by the House of Peers, then he will be found to have the most votes ; and so, being a member, will not be obliged to answer in any process during the sitting of the Parliament.

ANSWERED,—This was a plain stretch ; for the privilege was personal, and due only to actual members of Parliament, and not to potential ones ; for, if such possibilities were sufficient to stop the course of justice, then it were easy for peers to procure a double election, and thereby postpone their true and lawful creditors : and barons and burgesses might do the like, in the forty-five to be sent to the House of Commons ; which would be a scorning of justice : and *Magna Charta* provides, *nec differemus nec unquam denegabimus justitiam* : for the discussing of objections may depend long by the intervention of greater matters of state ; and it is strange that should be a protection during the dependance, especially seeing civil causes require not the party's presence, as criminal cases do : so there is no need of my Lord Marquis's attendance, seeing he either has, or may yet instruct his lawyers in all that is necessary for defence of his cause.

The Lords thought it was time enough to sustain his privilege when he carried his election ; and therefore repelled it *hoc loco*. . Vol. II. Page 464.

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1708. November 26. ANDREW RUSSEL'S EXECUTORS *against* JAMES BAIRD.

LORD Pollock reported the Executors of Andrew Russel, in Rotterdam, against James Baird, son to Alexander Baird, late bailie of Edinburgh. There had been a long tract of copartnery betwixt Russel and Baird, with one Turnbull and Thomson in Stockholm, by the space of thirteen years, wherein the effects were consigned to Bailie Baird, extending to one hundred thousand pounds and more ; and Russel's executors having raised a process of count, reckoning, and payment, for their share of that balance, against Bailie Baird in his lifetime ; and he being ordained to produce his count-books for constituting the charge, he deponed, That he had kept none for six or seven years bypast : which was urged as a great prejudice against him ; seeing, by the laws of Italy, and other trading nations, mentioned by Beneventus Stracca, *De Mercatura*, it is a criminal fraud in a merchant not to keep clear books anent his trade. During the dependence the Bailie dies ; and now there is a bill given in by Russel's executors, representing, that his son was tracing the same indirect footsteps with his father, to palliate, abstract, and embezzle all his effects ; and that, on his death, the haill cash and ready money lying beside him, upwards of a thousand pounds sterling, was secretly conveyed out of his house to some trustee ; and, on his deathbed, he indorsed his bills and bank-notes to a great value : his silver-plate, and other valuable moveables, were sent away to some private place, with all his bonds, securities, and instructions of debt, and the bulk of his goods and merchandize in his cellars and warehouses were removed, put out of the way, and disappear, which is done to defraud his creditors, and to abscond them out of the reach of lawful diligence : And, in regard of such dishonest methods, craves a summary warrant to cite the persons condescended on, to depone where these goods are hid ; not to infer any riot or crime against them, but allenarly to expiscate where they are, to the effect they may be confirmed, or otherwise affected by creditors' lawful diligence.

ANSWERED for Mr Baird,—That the desire of it was most irregular, extraordinary, and contrary to all form, unless the same came in by the course of a process ; for this is to begin at execution, and to believe their misrepresentations before they be proven, being an expiscation *super inquirendis*, against all and sundry ; and is liker to a defamatory libel and French manifesto, than an application to a civil judicatory tied to the forms of law ; and extraordinary remedies are never to be recurred to, save when all ordinary ones fail. But here law has introduced sundry remedies,—as creditors confirming themselves executors-creditors, arresting the effects, the gift of escheat, datives *ad omissa*. Likewise, thir very pursuers have raised a process of transferring, which will come in by course within a few weeks ; so a little patience will bring this affair to a regular trial, without breaking all the forms ever known in this kingdom, and without introducing the Spanish Inquisition, a name so formidably dreadful, that it is a terror to all the rational, sober part of the world ; especially when remedies are proposed infinitely worse than the disease.