

1774. July 2.

DR ANDREW HERON of Bargaly, against PATRICK HERON of Heron.

AFTER much litigation between these parties respecting the estate of Bargaly, the Court ultimately fixed certain rules, according to which Patrick Heron was to account for the possession of the estate, which was held for some years by him and his predecessors; and a remit was made to an accomptant to examine and report a state of the accompts, who had accordingly stated the accompts in different views, by all of which he established balances, as due to the Doctor, at Whitsunday 1773, by Patrick Heron, who surrendered to him the possession of the estate at the said term.

Patrick Heron having taken an appeal to the House of Lords, and served the same, the Doctor entered a cross appeal, and he afterwards executed an inhibition against Mr Heron, to the full extent of the sum concluded for by his libel, and recorded the same in the general register.

Upon an application to the Court, on the part of Mr Heron, to recal this inhibition, the Court, by their first interlocutor, found, That, after an appeal taken in the cause by both parties, *hinc inde*, and served, there was no dependence in this Court, upon which inhibition could proceed; therefore recalled the inhibition complained of, &c. But, upon reviewing the case, the Court were of opinion, that this was still a depending process, and that the inhibition ought to stand good; and, therefore, gave the following judgment:

“ Repel the objection to the inhibition, and find it valid and subsisting.”

Act. Dean of Faculty.

Alt. Murray, Crosbie.

Clerk, Tait.

Fol. Dic. v. 3, p. 321. Fac. Col. No 119. p. 320.

1779. December 9.

GRANT against MANSFIELD and RAMSAY.

GASCOIGNE entered into a minute of sale for the purchase of Dalderse from Sir James Campbell at L. 27,000, of which L. 15,000 was to be secured on the lands, L. 3000 paid immediately, and a bond to be granted by the purchaser and two cautioners for the remaining L. 9000. Soon after the execution of this minute, Gascoigne and his cautioners became insolvent, and Sir James now insisted, that in addition to the collateral securities formerly stipulated, the whole price should become a burden on the lands; which was accordingly done by Sir James granting disposition to the lands on that condition, and by Gascoigne's granting heritable bonds for the price in the proportions above-mentioned, on which infestment followed. In a judicial sale of the estate, brought by Gascoigne's Creditors, it was *pleaded* for one of them who had used inhibition after the minute of sale between Gascoigne and Sir James, but before the granting

No 63.

After appeal taken from judgments of this Court, and served *hinc inde*, it is competent to the pursuer to use an inhibition against the defender, as on a dependence.

No 64.