

got relief of the cautionary ; and having incapacitated the heirs of Sir Robert, or his creditors or legators, to pursue for their relief, and as he is now liable for the said three thousand merks, either to the creditors or legators, who shall be found to have best right :

The Lords did find Sir John liable for the said debt, upon this reason, That he was not able to assign the right of comprising and annualrents which he had purchased, without allowing to him the charges and expenses he had been at in purchasing the same : Which seemed hard, seeing the condition of his obligation was not fulfilled by Sir Robert himself ; and there was a necessity for him to acquire these rights, and to seek his relief, the heir or creditors never having interposed or desired to satisfy the charges he had been at ; so that, in reason, his just disbursements ought to have been deduced.

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1676. *January 21.* MR PATRICK HOME, Advocate, *against* The EARL of HOME.

IN a pursuit, at Mr Patrick Home's instance, against some of the tenants of Coldinghame, compearance being made for the Earl, who offered to defend upon a right to the lands,—it was ALLEGED for the pursuer, That he having transferred his title against the Earl, *passivè*, as heir to his brother, he could not be heard to defend the tenants, unless he had a title in his own person ; in which case he was content to debate, seeing thereby he behoved to be heir.

It was REPLIED, That albeit the transferring was given against him as heir *passivè*, yet that did not hinder him to defend upon any other right, without being heir.

The Lords did repel the allegiance, and found that the transferring being only against the Earl *passivè*, it could not hinder him to defend upon any other right which he had acquired *singulari titulo*.

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1676. *January 21.* MRS HOME *against* The said MR PATRICK HOME.

THE said Mrs Home having given in a petition to the Lords for payment of a yearly annuity, which she was provided to by her father, the Lord Renton, as being her only aliment,—it was ANSWERED, That he could not be decerned upon a naked petition, but there ought to be an ordinary action raised, and he cited ; and the same ought to proceed according to regulation, it being for a civil debt.

It was REPLIED, That he was a member of the College of Justice, being an advocate, and this being in effect an alimentary action, it ought to proceed summarily upon a bill.

It was DUPLIED, That the petition not being against him for any malversation in his calling, but being the ground of a civil action, he was in the common condition of all other lieges.