

hibition could not be extended but to the lands lying within the sheriffdom where the inhibition is used, and that the same is not extended against the inhabitants of the sheriffdom where the inhibition is used, but that they might buy and acquire lands lying in their sheriffdoms, or otherwise acquire bonds for sums of money, and thereafter comprise for the sums contained in these bonds.

No 11.

*Kerse, MS. fol. 60.*

1622. January 18. METHVEN *against* AN APPARENT HEIR.

No 12.

A SUPPLICATION being given in by Methven, who was cautioner for a tutor-dative, craving inhibition against the apparent heir of him who was bound for his relief of that caution; the bill was also refused by the LORDS, because they thought according to the form which is in use, that the same could not be granted against an apparent heir; as no action, charge, or execution could be used, or sought against him, *hoc nomine*, as apparent heir; until such time as he might be constituted such a person as might represent the defunct, who was bound, or charged to enter heir to him.

*Durie, p. 10.*

\* \* \* The contrary was decided, No 4. p. 6942.

1625. January 11. HAMILTON *against* KIRKPATRICK.

No 13.

THE LORDS would not grant an inhibition to the wife against her husband upon a contract of marriage. Inhibition is personal and binds not the heirs.

*Spettiswood, (INHIBITION.) p. 175.*

\* \* \* See Durie's report of this case, No 254. p. 6048. *voce* HUSBAND & WIFE.

1627. January 24. LORD ERSKINE *against* ERSKINE'S WIFE.

No 14.

THE warrant of the inhibition is the letters directed upon the Lords deliverance, which must be kept in all points precisely, and executed accordingly; therefore, in an action between my Lord Erskine and one Erskine's Wife, (Glossburn's sister) she having intented reduction of a comprising of a house of her husband's in the Canongate, *ex capite inhibitionis*; it was *excepted*, That the inhibition was not duly served, in so far as it was not served at the market-cross of Edinburgh, as the letters ordained.—*Replied*, The ordinance was in respect that Sir James Erskine, (the party inhibited) was out of the country first, but afterwards being come into it, the party did inhibit him personally, which was a better way to notify it to him; for as for the lieges they were certiorated by

No 14. proclaiming of it at the cross of the Canongate.—THE LORDS sustained the exception.

*Spottiswood, (INHIBITION.) p. 175.*

\*\*\* See Kerse and Durie's report of this case, *voce* EXECUTION, No 2. p. 3681.

1627. *July.* FARM against AYTON.

No 15. IN an action of reduction *ex capite inhibitionis*, pursued by the heirs-female of the Laird of Farme against the Laird of Ayton in Fife, the LORDS sustained the inhibition as lawful, albeit the same was executed at a market-cross within which the lands lay, year and day after the same had been personally executed, and at another market-cross, in respect the executions were all registrated within 40 days after the executions thereof *respective.*

*Spottiswood, (INHIBITION.) p. 178.*

No 16. 1629. *January 30.* STEWART against OGILVY.

Inhibitions ought to be executed at the head burgh of the district within which the party resides.

INHIBITIONS, interdictions, executions, and publications thereof, against persons dwelling within bailiaries, should be executed at the head burgh or town of the said bailiary, within which the said persons dwell, and registered in the said Bailie's and Stewart's books, and all executions that shall be otherwise executed are null; James VI. Parl. 15. cap. 268.; but because it requires to be proved that the persons dwelt within the said bailiary, this nullity is not used to be received against horning or inhibitions, by way of exception, but by reduction.

But this action being called again upon the 30th day of June, it was *alleged*, That the executions bore that the said inhibition was executed against the said Mr David Ogilvy, at his house at Pitmuir, and that they offered them to prove that the said house and land of Pitmuir lay within the regality of Kenmuir, whereby it was necessary that the said inhibition should have been executed at the cross of Kenmuir, within which the lands of Pitmuir lie. This exception was found relevant to be proved *prout de jure*; and the same being called again in the inner-house the 30th of January 1629, it was of new sustained by way of exception.

*Auchinleck, MS. p. 108.*

\*\*\* See Stewart against Ogilvy, No 66. p. 3728. *voce* EXECUTION.