No 65.

1684. *January.* Bailie Calderwood *against* Mr John Frank.

An apprising was found null, upon this ground, That the lands were not denounced at the head burgh of the regality, viz. Dalkeith, within which they lay, but at the head burgh of the shire, contrary to the act 268th, Parliament 15th, James VI.; which, after enumeration of hornings, inhibitions, &c. hath a general clause, 'and all others of the like sort;' and, by the general custom, denunciations of apprising are execute at the head burgh of regality; and the Lords found another apprising null, for that the lands were not denounced upon 60 days, when the debtor was out of the kingdom.

Fol. Dic. v. 1. *p.* 262. *Harcarse.* (Comprisings) *No* 299. *p.* 71.

SECT. VI.

Inhibition, at what Market Cross.

No 66.

1629. *January* 30. Stirling *against* David Panter.

Found an inhibition null *ope exceptionis* of lands within the sheriffdom, because it was not execute at the market cross of the regality where the party inhibited dwelt.

Fol. Dic. v. 1. *p.* 255. *Kerse, MS. fol.* 61.

*** Durie reports the same case:

An alienation being desired to be reduced, because it was made by the disponer after inhibition, and an exception of nullity being proponed against the inhibition, upon the 268th act of Parliament 1597, because conform thereto it was not execute at the head burgh of the regality, within which the party prohibited then dwelt; for the execution bore, that the party was prohibited at his dwelling-place at Pitmews, which he offered to prove was within the regality of Kyllimuir, at the head burgh whereof it was not executed. This exception was found relevant, and the nullity was found might be discust *hoc ordine*, without further process of reduction, albeit the same consisted *in facto*, and required probation, and albeit it could not be instantly proven: and it being *replied*, that albeit the said nullity might be admitted, yet it could not be admitted *in toto*, to make the inhibition null, except only for any lands lying with-

in the regality, and could not annul the inhibition, as it is executed at the party's dwelling-house, and at the head burgh of the sheriffdom within which the dwelling-house is, for the lands libelled, which lay within that regality; for he *alleged*, that that neither was, nor could be the mind of the act of Parliament, seeing the same extends only to make such inhibitions null, which are not execute at the head burgh of the regality, for such lands only as are within the regality; and cannot annul the same for the lands within the sheriffdom, at the head burgh whereof it is executed, no more than if he had been inhibited, personally apprehended, and executed against the lieges at the head burgh of the sheriffdom, he dwelling at that time within the regality, where no execution was made, *quo casu* the inhibition could not fall for the lands within the sheriffdom, *ergo* no more here, and therefore it is clear that the act of Parliament cannot extend thereto; which reply was repelled, and the exception still sustained, in respect of the act of Parliament, which declares such inhibitions null without restriction, or words taxative, but indefinitely. No 60.

Act. *Advocatus et Nicolson.* Alt. *Stuart et Fletcher.* Clerk, *Gibson.*

Fol. Dic. v. 1. *p.* 262. *Durie, p.* 419.

*** The like was decided January 1732, Stirling against Jamieson. *See* APPENDIX.

1662. *July* 18. SWINTON *against* ————.

No 67.
Inhibition found not to reach lands acquired after it, and lying in another jurisdiction than that in which it was published and registered.

THE said William Swinton having used inhibition against ————, at the cross where he lived, she falls heir thereafter to another person, and immediately dispones that person's lands, whereupon William raised reduction of that right, *ex capite inhibitionis*. The defender *alleged* absolvitor, because the lands disponed lye not within the shire where the inhibition was used. The pursuer *replied*, the land fell to the inhibited person after the inhibition; and the pursuer did all he was obliged to do, or could do till that time; which if it was not sufficient, creditors will be at a great loss, as to lands acquired or succeeded in after inhibitions.

'THE LORDS found the defence relevant, that the inhibition could not extend to lands in other shires, befalling to the inhibited after *quocunqe titulo*; but that the pursuer ought to have inhibited *de novo*, or published and registrate in that shire, seeing all parties count themselves secure, if no inhibitions be registrate in the shire where the lands lye, without inquiring further.'

Fol. Dic. v. 1. *p.* 262. *Stair, v.* 1. *p.* 128.