

1671. June 28. FORBES of Watertoun against SHEIN.

No 25.

FORBES of Watertoun pursues reduction of an apprising *ex capite inhibitionis*. The defender *alleged* absolvitor, because the bond which was the ground of the inhibition is satisfied, in so far as there followed thereupon an apprising, which came in the person of the debtor's apparent heir, and so is redeemable from him for the sums he truly paid, by the act 1661, cap. 62, betwixt debtor and creditor; and it is offered to be proved, that the sums he paid are satisfied by intromission with the rents of the appraised lands, or what is wanting the defender will instantly satisfy or purge. It was *answered*, That albeit the act of parliament had declared that appraisings might be satisfied by payment of the true sums paid for them by the apparent heir, that cannot extend to this bond, or inhibition, or reduction thereupon; for the pursuer may pass from his apprising, and yet make use of the bond, and this allegiance will only be relevant when he insists upon his apprising.

THE LORDS found the defence relevant, that the satisfaction of the apprising on the bond did to all effects satisfy and extinguish the bond itself.

*Stair, v. 1. p. 742.*

1676. July 7. FINLAY against LITTLE.

No 26.

QUINTIN FINLAY pursues reduction *ex capite inhibitionis* against Little of Libberton, who *alleged* absolvitor, because the inhibition is null, as being executed at the house of the person inhibited, not designing where the dwelling-house was. It was *answered*, That the executions bear 'The within designed John Lindsay's dwelling-house,' who is designed within 'merchant burgh of Edinburgh.' It was *replied, non relevat*, seeing that does not import that he was indweller in Edinburgh, for many merchants, burgesses of Edinburgh, are not residents. It was *duplied, præsumitur residens*, unless another domicile were condescended upon and offered to be proved.

THE LORDS sustained the inhibition, unless another domicile were offered to be condescended upon and proved.

*Stair, v. 2. p. 442.*

1680. January 7. HAY against The LADY BALLEGERNO.

No 27.

JOHN HAY being infest in the lands of Murie, pursues the Lady Ballegerno, and others, for reduction and improbation of any rights they can pretend to that land, and craved certification *contra non producta*. The defender alleged no certification, because the pursuer's title is reduced *ex capite inhibitionis*. The

An inhibition which designed the person inhibited 'Merchant Burgh of Edinburgh,' sustained, tho' the execution bore only that a copy was left at his dwelling house 'within writ-ten.'

No 27. pursuer *answered*, That a reduction *ex capite inhibitionis* hath only effect as to the sum upon which the inhibition proceeded, that it may affect the debtor's real rights, and so is but a qualified right of reduction *pro tanto*, and can be founded on by none but those who have right to the sum on which the inhibition proceeded.

THE LORDS repelled the defence, and assigned a term to the pursuer to produce, or otherwise ordained certification to pass *contra non producta*.

*Fol. Dic. v. 1. p. 476. Stair, v. 2. p. 733.*

1680. November 27. JOHN HAY *against* LADY BALLEGERNO.

No 28. IN John Hay of Murie's declarator of recognition against the Lady Ballegerno, Poultry Fotheringham, and other creditors, the LORDS 'found an inhibition null, because it bore several knocks, and not six knocks, as the act 75 Parl. 1540 requires, (but that act speaks only of actions), though they offered to prove by the messenger and witnesses, that the six knocks were really adhibited.'

*Fountainhall, v. 1. p. 119.*

\* \* \* See Stair's report of this case, No 123. p. 3773. *vide* EXECUTION.

1682. November. MOUTRES *against* WILLIAM PORTEOUS.

No 29. A DEBTOR, who was inhibited in the year 1632, having granted a bond to another person in the year 1634, upon which a comprising was led in the 1642, the inhibitor raised reduction of the comprising *ex capite inhibitionis* in the year 1643.

*Alleged* for the defender, That the inhibition was prescribed.

*Answered* for the pursuer; That he was not *valens agere* till the apprising was led, till which time there was nothing to be quarrelled by his inhibition.

*Replied*; The bond upon which the apprising followed being granted in *anno* 1634, the inhibitor might have taken some document upon his inhibition.

*Duplied*; The inhibitor not being prejudged by the bond, but by the apprising, he had no reason to use his inhibition till after the apprising.

THE LORDS found the answer and duply relevant.

*Harcarse, (INHIBITION.) No 630. p. 173.*