

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 disponent 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-