No 116.

standing of an inhibition, if he sees it has nullities, by looking at the register. This case was to-day voted; and there being sixteen Lords, Ordinary and Extraordinary, within, besides the Chancellor, and the Lord in the Outerhouse, and two absent, they were equally divided, eight against eight; so it came to the Chancellor's casting vote, which happens not oft; and he craved time to deliberate and think upon it, as a leading important case. There were nine scores of inhibitions produced, which had the same want and defect; so that, if it were annulled, all these diligences would fall *in consequentiam*. As this is an argument *ab incommodo*, so we see as great inconveniencies on the other hand, to dispense with these ancient solemnities, (for the *hoesium* is from the Norman law,) or to prove them *ex intervallo*, though they signify nothing in themselves, nor tend, in the least, to certiorate the lieges. *Quid juris* if the Chancellor decline to give his suffrage? *An in pari casu reus est absolvendus, ut actus valeat*, or are they to be forced to agree?

1683. *February* 9.—In the question betwixt Lundy and Trotter, (mentioned 29th November, 1682,) reported by Pitmedden, the Lords found the sum of the inhibition purgeable and redeemable, notwithstanding that upon the bond, which is the ground of the inhibition, there was a comprising led, and the same was now expired; which, in effect, was to redeem the expired comprising: But the wadsetter who competed here, and offered to pay the sum in the inhibition, was preferable to the comprising; only the inhibition, being prior to his right, straitened him. And the Lords, after balancing the case, found this more equitable than the contrary decisions, on 24th February, 1666, Grant, No 114. p. 7045.; and 8th July, 1670, Lady Lucy Hamilton against Pitcon, No 115. p. 7046.; observed by Stair, which were but *una hirundo*: And found the sums in the comprising behoved to be paid, but not the accumulation of the annualrents due and apprised for at the time of the comprising; and found the said comprising could not be drawn back to the inhibition, in regard the wadset foresaid had intervened betwixt them.

Fountainhall, v. 1. *p.* 143. 197. 217.

1684. *February* 1. Crichton *against* Anderson.

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A reduction *ex capite inhibitionis* has no effect, except from the date of the sentence.

One Crichton, a creditor to William Anderson, having arrested rents of lands belonging to the debtor, and also got a corroboration of his debt from George Anderson, to whom William, his father, had disponed these lands; John Anderson, another of William's creditors, did afterwards also arrest the rents; and, in a competition of forthcomings, Crichton craved to be preferred, in respect he was the first arrester; and the common debtor being denuded in favour of George, who was infeft before John Anderson's arrestment, the duties belonged to George, who was not debtor to John Anderson.

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Answered, That John Anderson repeated a reduction of the disposition upon an anterior inhibition used against the granter.

Replied, That the reduction will only take effect for the time to come, and the bygone rents will belong to George, as *fructus bona fide percepti*, before the sentence of reduction. 2*do*, The inhibition is null, for not being duly executed, in so far as the copy was left at the debtor's shop, and not at his dwelling-house, conform to act of Parliament.

Duplied, George being put in *mala fide* by the inhibition and intimation to the lieges, he cannot be said to have possessed *bona fide*, especially considering, that the rents are yet unuplifted in the tenant's hands. 2*do*, The design of the execution being to certiorate the party, the shop was the fittest place, where he staid all the day time; and a copy was delivered to his wife.

THE LORDS reduced the disposition *a sententia*; and found, that the duties which fell due before sentence belonged to George and his Creditors, though they were not uplifted; but, thereafter, the LORDS found the inhibition null, as not duly executed, unless it be made appear, that the house and shop were together.

Fol. Dic. v. 1. *p.* 476. *Harcarse*, (INHIBITION.) *No* 634. *p.* 174.

*** See P. Falconer's report of this case, No 83. p. 2857. *voce* COMPETITION.

*** Sir P. Home reports this case:

1684. *January*.—IN the multiplepoinding raised at the instance of William Anderson's tenants, of certain tenements of land in Edinburgh, against his Creditors, there being compearance made for John Anderson, who had arrested his rents, and craved to be preferred upon his arrestment; *answered* for John Crichton, who had likewise arrested the rents, That he ought to be preferred; because, that William Anderson was denuded in favour of George Anderson, the son, before John Anderson's arrestment; and that the said John Crichton had arrested for a debt due both by the father and the son. *Replied* for John Anderson, That there was an inhibition used upon his debt, before the disposition made by the father to the son, upon which he had raised reduction, which he now repeated; so that the disposition made by the father to the son being reduced *ex capite inhibitionis*, John Crichton's arrestment must fall in consequence. *Duplied* for John Crichton, That, albeit the son's disposition were reduced *ex capite inhibitionis*, yet the reduction must only take effect from the date of the decreet, and it could not be extended to the rents he had affected by legal diligence, before the decreet of reduction. THE LORDS found, that the decreet of reduction could only take effect from the date thereof; and, therefore, preferred John Crichton, the arrester, for the son's debt, to the mails and duties due before the decreet of reduction.

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It being farther *alleged* for John Crichton, That the inhibition was null, it not being executed against the debtor personally, or at his dwelling-house, as was required by the act of Parliament, but bears only, that there was a copy delivered to the debtor's wife, at his shop ; *answered*, That the design of citations and executions by the law being only that the party may be certiorate, it was sufficient that there was a copy delivered to the debtor's wife at his shop; for, he being a merchant, it is to be understood that the shop is the ordinary place of his residence : And it is provided by the act of Parliament, That, if the party cannot be gotten personally, that they shall shew the letters to the servants of the house, or other famous witnesses, and shall offer a copy of the letters to the servants, which, if they refuse to accept, then the copy is to be affixed upon the party's door ; so that, seeing the debtor's wife did accept of a copy, who, by the law, is presumed to have acquainted her husband with it, there was no necessity for executing the letters at the debtor's dwelling-house. The Lords found the inhibition null, in respect it was not executed at the party's dwelling-house, conform to the act of Parliament, unless that the pursuer would offer to prove, that the shop was a part of the dwelling-house. It was farther *alleged* for John Anderson, That he having led an adjudication of the tenements, whereof the mails and duties were craved, he ought to be preferred, not only since the date of the adjudication, but since the citation upon the summons of adjudication ; seeing it is declared, by the act of Parliament concerning adjudications, that the adjudger shall be in the same case, after citation in the process of adjudication, as if apprising were led of the lands at that time, and a charge given to the superior thereupon ; so that, by the law, a citation given upon a summons of adjudication is equivalent to a charge against the superior, as if an infeftment had been passed upon the adjudication of that date ; and as an adjudication and infeftment thereupon would have been preferred to John Crichton, so, by that same reason, he ought to be preferred, by virtue of the citation given upon the summons of adjudication, which was prior to John Crichton's arrestment. *Answered*, That the said clause in the act of Parliament takes only place in the case of voluntary rights, made by the common debtor, after citation used by the creditor upon the summons of adjudication, or in the case of a voluntary gratification by a superior, that should enter one creditor before another ; but takes no place in the case of legal diligences ; in which case, creditors are always preferred according to their diligence. The Lords preferred John Crichton to the mails and duties preceding the adjudication, and the adjudger to the mails and duties thereafter ; and found, that the said clause in the act of Parliament takes only place in the case of voluntary rights, made by the common debtor, or by the superior, in entering one creditor before another ; but that a citation upon the adjudication was without prejudice of prior legal diligences.

Sir Pat. Home, MS. v. 1. *No* 528.