No 123. greater part, without consent of the superior, or other feudal delinquence, infer recognition, and thereby evacuate the effect of an inhibition anterior to the delinquent's right, it were a compendious way for insolvent debtors, when inhibited, to disappoint their creditors by such delinquences; and therefore the recognition must be but prejudice to the inhibition, and with the burden of the sum upon which it proceeded.—It was *answered*, That inhibitions do not denude, or give any real right, but only hinder the person inhibited, to grant any voluntary right, which becomes null, as *spreto mandato* of the inhibition, so that it cannot hinder the casuality of the superiority; for notwithstanding, the vassal's liferent would fall, or his ward, and therefore so must the recognition upon his deeds; 2*do*, This inhibition is *ipso jure* null, the executions bearing to be at a dwelling-house, and not bearing six knocks at the door thereof, as is prescribed in the act of Parliament, albeit it bear several knocks.

The Lords found the inhibition null, and so had no occasion to determine the effect of the inhibition against the recognition.

Fol. Dic. v. 1. *p.* 267. *Stair, v.* 2. *p.* 793.

1696. *July* 30. Sinclair *against* Lord Bargeny.

No 124.
It is not necessary that an execution bear that the messenger sought entrance before giving six knocks at the door.

In the declarator of the Lord Bargeny's escheat, pursued by Mr Archibald Sinclair advocate, it was *objected*, 1*mo*, The execution of the horning was null, seeing it did not bear, that he sought entrance before giving the six knocks, as required by act 75th, Parl. 1540; and cited Durie, 28th March 1637, Scot *contra* Scot, *voce* Proof; and Stair, Tit. Confiscation.——The Lords found this would overthrow the most part of the executions in Scotland, and that this formality was sufficiently included in the six knocks.—2*do*, *Alleged*, It was still null, because, by the 268th act of Parl. 1597, all executions of horning executed against persons dwelling within bailiaries, ought to be registrate there; but the Lord Bargeny then lived within the bailiary of Carrick, and yet the horning is not registrate within the court books of that jurisdiction, and so is null.—*Answered*, The act of Parliament imposes no necessity, but declares registration there, shall be equivalent as if done in the Sheriff's books; so that at most it is but a cumulative jurisdiction with the shire of Ayr, and not privative; as appears by this, that the Earl of Cassillis, as heritable Bailie of Carrick, applied to the Parliament to get the bailiary and jurisdiction disjoined from the shire of Ayr, and it was refused him; likewise these bailiaries of Kyle, Carrick, and Cunningham, were the private patrimony of the Stuarts before they got the Crown in 1370, and were then erected by them into bailiaries, but not to subtract them from the sheriffdoms where they lay. If they were regalities, there might be more pleaded for it; but it is incongruous to erect the King's own lands into regalities, he possessing these privileges, (which he communicates to his subjects by granting them regalities) *jure proprio*. Some of the Lords were for trying the custom, whether or not the lieges had been in use to registrate their diligences

in the Bailie court books of Carrick, and if it was only *actus necessitatis* or optional to them. But it was not decided, because it was remitted to some of the Lords to settle them. No 124.

Fol. Dic. v. 1. *p.* 267. *Fountaidhall, v.* 1. *p.* 731.

*** The like was found 20th December 1705, Scrimzeour against Beatson, No 103. p. 3758.

1702. *July* 17. BIGGAR *against* WALLACES.

No 125.
An execution being left with some of the family at the defender's house, there is no necessity for the execution mentioning the knocks being given.

WILLIAM BIGGAR of Wolmet, as creditor to the deceased Sir William Wallace of Craigy, pursues Mrs Jean and Margaret Wallaces, his daughters, as lawfully charged to enter heirs, to the effect they might renounce, and he adjudge. —*Alleged*, No process; for the summons is executed on the same day with the charge to enter heir, and both executions are given *simul et semel*; whereas the 40 days on which the charge proceeds ought to be expired and run before the summons can be executed, because the libel narrates, they are lawfully charged to enter heir, and is expressly relative thereto, and so in the order of nature ought to precede the summons.—*Answered*, By the fixed custom and practice they may be both executed in one day, the charge to enter heir being first given, providing there be 21 free days given after the out-running of the 40 days appointed for the general charge, for the first diet, and six free days for the second; all which is punctually observed here, and which is introduced for the ease of the subjects, and diminishing their expenses on messengers.——THE LORDS repelled the dilator in respect of the answer.—2*do*, *Alleged*, No process; because, though the execution bears not personally apprehended, but only a copy left with some of the family at the defender's dwelling-house, yet it does not mention six knocks given, as the law requires.—*Answered*, This is no nullity; because the 75th act 1540, regulating these citations, only requires six several knocks at the most patent door, where the messenger is denied entry and access, and he finds the doors shut; but here there was patent access, and copies left with persons in the family, and so no need for the knocks; and it was expressly so determined by the Lords on the 11th of December 1679, the Countess of Cassillis against the Earl of Roxburgh, No 19. p. 3695.——THE LORDS likewise repelled this dilator, and sustained process.

Fol. Dic. v. 1. *p.* 267. *Fountainhall, v.* 2. *p.* 154.

1707. *June* 12. DUFF of Drummoir *against* GORDON of Achintoul.

No 126.
An execution of an inhibition was

DRUMMOIR having purchased in the preferable rights upon the estate of Anderson of Westertown, he pursues a sale and ranking of the creditors; wherein