

1685. *March.* MARGARET CRAWFURD *against* OLIPHANT of Condie.

AN inhibition being quarrelled, as not duly execute at the head burgh of the regality of St Andrews ;

Answered ; It was execute at the head burgh of the stewartry of Strathern, within which the inhibited person's lands lie. 2, *Esto* the lands lay within the regality of St Andrews, it is offered to be proven, that legal diligence against those lands was usually executed at Strathern, which is sufficient to maintain the execution quarrelled, as diligence used by persons habit and repute messengers will be sustained after their deposition.

Replied ; *Non relevat* that diligences were indifferently execute at Strathern or St Andrews, unless the defender will offer to prove, that, for the space of forty years, all diligences concerning the several lands were execute at Strathern, for if any one execution had been made at St Andrews within the forty years, it preserves the privilege of the regality, conform to the act of Parliament.

THE LORDS found it relevant to support the inhibition, that for the space of forty years all diligences concerning these lands were executed at Strathern, and not that executions were made promiscuously at Strathern or St Andrews.

Fol. Dic. v. 1. p. 202. Harcarse, (INHIBITION.) No 637. p. 175.

No 17.
An inhibition not having been executed at the head burgh of the regality ; usage for forty years was found necessary to support the execution at the head burgh of the stewartry.

1733. *February 20.*

HAY of Strowie, *against* CREDITORS of David Simpson.

IN a competition, it was objected against an inhibition led against an inhabitant of the town of Kirkaldy, that it was executed against the lieges at Coupar, the head burgh of the shire, whereas it ought to have been executed at Dunfermline, the head burgh of the regality where Kirkaldy lies. It was *answered*, That *communis error facit jus*, and it was commonly understood, that the town of Kirkaldy was not within the regality of Dunfermline ; for a proof of which, a condescendence was given in from the 1644, downwards, by which it appeared, that most of the diligences against the inhabitants of Kirkaldy were executed at the head burgh of the shire, many of them at both the head burghs of the shire and regality, and half-a-dozen of them at the head burgh of the regality only. On the other hand, it appeared, that a great number of the processes had been carried on against the inhabitants of Kirkaldy at the regality courts ; and it was *pleaded* against the inhibitor, whatever might be the case, were the question only with the debtor, yet in a competition of creditors, every objection ought to have its full weight. THE LORDS sustained the objection against the inhibition, that it was not executed at the head burgh of the regality. *See APPENDIX.*

No 18.
The objection that an inhibition was not executed at the head burgh of regality, was sustained, in a competition of creditors, notwithstanding of *communis error*, of executing diligences at another place.

Fol. Dic. v. 1. p. 203.