

1748. December 2. The Creditors of KINMINNITY against INNES.

No 50.

Though an inhibition should be registered in the books of a shire, where part of the debtor's lands lie, within forty days after it had been published in that shire, yet if it be not also registered within forty days from the publication, in the shire of the debtor's domicile, it can have no effect as to these particular lands.

IN the ranking of the Creditors of Kinminnity, two objections were made by the other creditors to an inhibition on the debt due to Anna Innes, *imo*, That the inhibition, which was executed personally at Edinburgh, had not been also executed at the market cross of Edinburgh, where the debtor resided at the time, but only at the market cross of Banff, where he had his ordinary domicile. *2do*, That the inhibition was null as to the debtor's lands in the shires of Sutherland and Moray, in respect it had not been registered in the particular registers of the said shires, nor in the general register, within 40 days after execution against the party, and publication to the lieges at the market cross of the head burgh of the shire where his dwelling house lay.

The first of these objections the Lords 'repelled; and sustained the second.'

As to the *1st*, There was nothing in the objection; as the law which requires publication to the lieges at the market cross of the head burgh of the shire where the party dwells, is rather more effectually complied with by publication at the market cross of the head burgh of the shire where he has his ordinary domicile, than when made at the market cross of the head burgh where he happens to have an occasional residence; in so much, that it was not thought clear that such publication would not have been liable to objection.

And as to the *2d*, The fact was, that, after elapsing of 40 days from the publication at the market cross of Banff, the shire of the party's residence, it had been of new executed at the market crosses of Sutherland and Moray, and within 40 days thereof registered in the public register; but that was found not to be sufficient, in respect of the express directions of the act 119th, Parl. 1581, which requires no publication at any other cross than that of the head burgh of the shire where the party dwells, and registration within 40 days thereof; and enacts, that where he has lands in another shire the inhibition be registered within *the same* 40 days, in the books of the said shire.

*Fol. Dic. v. 3. p. 325. Kilkerran, (INHIBITION.) No 10. p. 289.*

1749. February 22. BLACKWOOD against MARISHAL.

No 51.

Inhibition on a liquid debt, cannot be stopped on any account.

WILLIAM MARISHAL, shopkeeper in Glasgow, having obtained decree before the Lords, in December last, against Mr Robert Blackwood of Pitreavie, advocate, for L. 64 Sterling, as damage sustained by Pittreavie's not fulfilling to him a bargain of victual, and for L. 44 Sterling as expenses of plea; how soon the same was extracted, he gave a charge to Pitreavie thereon, and at the same time served him with an inhibition.

Pitreavie applied to the Lords by complaint against this procedure, and craved that they might stop the registration of the inhibition as invidious, at

least altogether causeless, as his circumstances were unquestionably good, and above all suspicion; and that it would not be alleged, that there was any truth in, or foundation for the facts set furth from the usual stile in the bill of inhibition.

No 51.

THE LORDS 'refused to recal the inhibition,' being of opinion, that let a man's circumstances be what they will, an inhibition against him could not be stopped when used for a liquid debt. The more solvent the debtor is, the less excusable is the deferring payment; for procuring which, inhibition, imprisonment, and other legal compufsitors have been contrived.

*Fol. Dic. v. 3. p. 324. Kilkerran, (INHIBITION.) No 9. p. 288.*

1750. January 16. *SELLERS against CLEUGHTON.*

No 52.

It was here found, that an inhibition did not only secure the principal sum and interest in the bond, which was the ground of it, but that it also extended so as to carry by the subsequent adjudication and accumulations, the irredeemable right to the lands by an expired legal, in prejudice of an intervening absolute right of property, granted by the person inhibited, between the date of the inhibition and the adjudication.

*Fol. Dic. v. 3. p. 322. Kilkerran, (INHIBITION.) No 11. p. 290.*

\* \* D. Falconer reports this case :

AGNES, sister of Robert Davidson, used an inhibition against him, subsequent to which he conveyed his heritage for onerous causes, of which she obtained reduction, and adjudged upon her ground of debt; and then disponed her debt and diligence, which came by progress into the person of William Sellers writer in Edinburgh.

The disponee from Robert Davidson raised a reduction, reductive of Agnes's decret; and the matter resolved into a competition for the mails and duties, betwixt William Sellers and George Cleughton, undertaker of coaleries at Newcastle, purchaser by progress from Robert Davidson's disponee.

The question now to be observed was, how far the subject adjudged, being conveyed before the adjudication, though subsequent to the inhibition, was affected thereby? Whether to the utmost extent an adjudication could be pleaded, or only as a security for the bond, without accumulations? Whereupon the Lord Ordinary, 22d November 1749, 'Found, that the inhibition secured the debt, and hail legal consequences thereof.'

*Pleaded* in a reclaiming bill, The stile of an inhibition is only securing the principal sum, annualrents, and penalty, contained in the bond; while the creditor's security for these is not impaired, the debtor may lawfully alienate his