

No. 13. 1750, Feb. 2. CREDITORS of MURRAY of Stanhope, *Competing.*

AN inhibition at Earl of March's instance was objected to, for that though it was executed against Sir Alexander as then out of the kingdom, at the market cross of Edinburgh, pier and shore of Leith, yet against the lieges it was executed at the market cross of Peebles, where he usually resided when on his own estate in Scotland. Answered, It was rightly executed at Peebles against the lieges and not at Edinburgh, pier and shore of Leith, because the lieges were not out of the kingdom. I desired that the keepers of the registers might certify what has been the usual practice, because if it is at the market cross of Edinburgh, and pier of Leith, and not at the head burgh of the shire, the sustaining this inhibition would be annulling all of them. However the Lords sustained the inhibition, but neither Strichen the reporter nor I voted.

No. 14. 1750, June 5, 10. COMPETITION of the CREDITORS of CRANSTOUN.

HORSBURGH was creditor by a personal bond in L.1824, on which he inhibited in 1728. In August 1728 he granted an heritable bond to Davidson, and in March 1731 he gave an heritable bond of corroboration to Horsburgh with accumulations, and another ground of debt, amounting in whole to L.2546, whereon he was infert in May 1732, and in 1736 Horsburgh and sundry personal creditors adjudged. In the ranking Davidson was preferred *primo loco* on his infertment, and Horsburgh *secundo loco*, which exhausted the price that nothing remained to the adjudgers. In the scheme of division Horsburgh insisted to draw upon his adjudications supported by the inhibition, but it was objected that the adjudication was not led on the bond that was the ground of the inhibition but on the corroboration, and most of us seemed to think the objection good, and that nothing could entitle him to draw by his inhibition but adjudging on his original bond; though Justice-Clerk thought that since the sum in the original bond was included in the corroboration, that adjudging on the corroboration was sufficient; but then it was objected that a new adjudication would not draw because excluded by the former adjudgers. But we thought, as the adjudgers were excluded by Horsburgh's infertment they could not compete with his adjudication, and as Horsburgh had already adjudged though only on his corroboration, the Lords thought it needless to make him adjudge over again, and therefore found him entitled to draw out of Davidson's share what he wanted of the sums in his original bond. And Kilkerran mentioned a case where a like judgment was said to have been pronounced in the case of the creditors of Colonel Stuart, I think it was for Mrs Scott of Galla. 16th June Adhered, with this explication, that Horsburgh drew first on his inhibition, next Davidson on his infertment, and 3dly, Horsburgh on his third infertment, as in Whitehaugh's case.

No. 15. 1750, Nov. 6. COMPETITION, CREDITORS of SIR G. HAMILTON.

IN this competition an old inhibition on two bonds, one by Sir Robert Miln and Sir George Hamilton, the other by Sir George alone, was objected to, for that though both bonds were recited in the preamble, yet the will of the letters was only to inhibit on the

foresaid bond in the singular number, and agreeably to the will, the messengers executions (there being two of them) mentioned also bond in the singular number, though in the register they had erroneously added the letter *s*. And I at first sustained the objection, but afterwards on showing me a decret 8th July 1725 in a question on this very inhibition with Callender of Craigforth, where the same objection was repelled, I thought it did not become me to contradict a judgment in point of the whole Court. Therefore I gave my interlocutor in respect of that former judgment repelling the objection. Pittrievie reclaimed, and the President and others were of my opinion, that when preference is claimed on legal diligence, especially when that diligence is used to reduce onerous transactions as being *spreta auctoritate*, that if there be any defect in the diligence equity cannot interpose to supply it. And I observed further, that there was more here wanting than the letter *s*, because Sir Robert Miln could not be inhibited on both bonds. But on the question it carried to adhere to my interlocutor, *renit. President et me.*

No. 16. 1751, July 3. CREDITORS OF COCKBURN OF LANGTOWN, *Competing.*

See Note of No. 11. *voce* ANNUALRENT.

No. 17. 1751, July 3. CREDITORS OF WILLIAM M'KAY, *Competing.*

An inhibitor objected to a bond in 1742 as after inhibition. Answered, That the bond was granted for a writer's account partly before the inhibition, partly after, and founded on a letter employing him prior to the inhibition. The Lords sustained the bond as to all the articles prior to the inhibition, but sustained the objection to the bond as to all the articles after inhibition and as to annualrent. 2dly, Objected to the inhibition, which was against a man and wife, as the execution bore, "whereof I delivered to the said Elizabeth Fowler and William M'Kay personally apprehended one just and authentic copy;" that therefore only one copy was delivered to both, and it does not appear to which;—but we thought that it imported one copy to each of them, and repelled the objection, *renit. Justice-Clerk, and Shewalton, Ordinary*; 3dly, An inhibition being raised on depending processes which they submitted, and decret-arbitral was pronounced, upon which diligence followed,—it was objected that there having no decret followed on the depending process, the inhibition was of no avail,—and we sustained the objection.

No. 18. 1752, June 5. CREDITORS OF SIR G. HAMILTON, *Competing.*

See Note of No. 43. *voce* ADJUDICATION.

IRRITANCY.

No. 1. 1735, June 11. MR KIRK *against* SIR JOHN GORDON.

THE Lords would not affirm the interlocutor founded upon the irritancy incurred in April 1733 before the payment in November 1733, which they generally thought purged