

1791. June 9.

SHARP against ROBSON.

N 55.

ROBSON *objected* to the execution of a summons against him, that though he was resident in Scotland at the date of the libelling and signeting the summons, and had a dwelling-house in Langholm, he had left the country some months before its execution, and took a house *animo remanendi* at Newcastle, where he had ever since resided. He admitted, that his children still occupied two rooms in his former house at Langholm, but it was only as being boarded there; and, on these grounds he *contended*, that the summons being executed at Langholm, and he cited on the usual *induciæ*, instead of being executed at pier and shore on sixty and fifteen days, the same was therefore null. THE LORDS allowed a proof of the facts alleged, being clearly of opinion, that, if proved, the execution was irregular. See APPENDIX.

Fol. Dic. v. 3. p. 188.

1793. February 1.

HENRY PEIRSE and Others, against Mrs ELIZABETH ROSS.

HUGH ROSS was proprietor of certain lands lying in the shires of Ayr and Ross, which were brought to judicial sale.

In the ranking of his creditors, Elizabeth Ross produced as her interest, a claim secured by an inhibition which was executed against Hugh Ross, as forth of the kingdom, at the market-cross of Edinburgh, pier and shore of Leith, and was published against the lieges both there and at the market-cross of Ayr, the head burgh of the county where he generally resided when in Scotland. It was regularly recorded, with all these executions, in the general register at Edinburgh.

To this inhibition Henry Pierse and other creditors of Hugh Ross

Objected; That as it had not been published at the head burgh of the shire of Ross, it could not be effectual as to the lands belonging to the common debtor in that county. The object of publication is to give warning to the lieges (who are always presumed to be within the kingdom) of the debtor's situation; it must be made therefore at the head burgh of the county where the debtor resides; and, if he is out of the kingdom, at the head burgh of every county in which his property is situated; 9th June 1752, Blackwood against the Creditors of Hamilton, No 47. p. 3396.

Answered; If the debtor is within Scotland, it is sufficient that an inhibition be published at the market-cross of the head burgh of the county where he resides, in order to be effectual against his heritage wherever situated; and, if he is out of the kingdom, it is only necessary for this purpose, that it should be published at the market-cross of Edinburgh, as the *commune forum*, and at the

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An inhibition against a person out of Scotland, is effectual against all his lands within the kingdom, if published at the market-cross of Edinburgh, and pier and shore of Leith.

No 56.

pier and shore of Leith. The publication at the market-cross of Ayr, in the present case, was merely used *ob majorem cautelam*. If publication at the market-crosses of the head burghs of every shire where the lands lie, were required, no inhibition could be depended upon, with respect to the debtor's subsequent acquisitions, unless it were published at the market-cross of the head-burgh of every county in Scotland; Stair, IV. 50. 10.; Macdowall, I. 7. 136.; Erskine, II. 11. 6.

THE COURT, upon the ground stated for Mrs Ross, 'Repelled the objection.'

Lord Ordinary, Swinton. Act. Rolland, Swinton. Alt. Wight. Clerk, Sinclair.
Fol. Dic. v. 3. p. 187. Fac. Col. No 21. p. 43.

S E C T. V.

Denunciation of Comprising.—Denunciation upon Horning.—
Relaxation.

1561. June 19. LAIRD OF BLANERNE *against* LAIRD OF RESTALRIG.

No 57.

A comprising was found null, because the lands lying within a regality, the denunciation was made, not at the head burgh thereof, but at the head burgh of the shire.

THE denunciation of landis to be comprisit sould be maid at the ground of the samin, and at the mercat cros of the principal burgh of the schirefdome or schirefdomis quhair the landis lysis.

1562. January 27. LORD SEYTON *against* EARL OF MONTEITH.

BUT gif the landis lysis within ony regality, the denunciation thair of aucht and sould be maid at the ground of the saidis landis, and als wa at the principal and heid town of the said regality; uther wayis, gif the landis lyand within the regalitie be denuncit at the mercat cros of the heid burgh of the said schirefdome, the denunciation, comprising, and all that followis thair upon is of nane avail, and may be reducit.

Fol. Dic. v. 1. p. 262. Balfour, (COMPRISING.) No 1. p. 401.

* * * See Act 268th, Parliament 1597.

No 58.

A party put to the horn, must be de-

1583. June. EARL OF ANGUS *against* The DONATAR of his ESCHEAT.

THE Earl of Angus persewit for reduction of the gift of his escheat, disponit in sundrie portions to sundrie persons. The second reason of the summons was,