

I N H I B I T I O N .

S E C T . I .

Nature, Stile, and Effect of an Inhibition.

CRICHTON *against* EARL OF TULLIBARDINE.

IN an action of reduction pursued by Robert Crichton of Cluny *contra* William Earl of Tullibardine, the LORDS found, That an inhibition was null, because the Earl of Athole was not inhibited, neither personally, nor at his dwelling-place, albeit he was inhibited by open proclamation at the market-cross of Forfar.

The like decided betwixt Alexander Syme and the Lady Goldingknows, (see No 8. p. 6943.,) and this was decided in presence of the hail Lords, *omne suna voce dicentes*.

The arguments to sustain the inhibition were two. *1mo*, Not necessary, because the party is inhibited by open proclamation, which is sufficient to put him *in mala fide* as well as the lieges. The answers were, *1mo*, That the force of inhibitions depends by authority, *ex mandato judicis*, and therefore, the form prescribed by the Judge, in directing of inhibitions, ought to be precisely observed, specially seeing the effect thereof is *ad tollendam libertatem commercii*; *quia libertas est juris naturalis*. *2do*, A party cannot be inhibited *ipso facto*, except in the contract he made that himself, but a bond or contract to pay sums cannot inhibit him; *argumento*, but if inhibitions were raised, not upon a contract, but upon the dependency of an action, *casus dubius est eventus*; or rather by a husband against his wife upon a naked supplication; *his casibus* the party behoved to be inhibited; *ergo, et in contractibus, quia eadem est ratio*, seeing parties are as well obliged *ex contractu*, as *ex quasi contractu, et negotio gestio*. *3tio*, If the party were in *mala fide*, *ergo* his heir should also be in *mala fide*, and consequently inhibitions should be perpetual; and so they did with the

No 1.
The party inhibited must be cited either personally or at his dwelling place, not by proclamation at the market cross.

- No 1. party inhibited ; and the Master must be inhibited *de novo*, *ergo non est satis* to say, that he was *in mala fide*, but also he must be formally inhibited ; what is necessary against the heir, must also be necessary against the contractor. *4to*, The words of the act of registration of inhibition 1581, cap. 119, which ordains the same to be registered in the sheriff's books, where the party inhibited dwells, which infers necessarily, that the party may be inhibited. *5to*, The practique betwixt Syme and the Laird of Coldingknows.

Kerse, MS. fol. 60.

A. against B.

- No 2. INHIBITIONS and interdictions should be registered within forty days after the publication of them, and the leters and executions should be signed with the subscription of the clerk, and delivered to the party, within 24 hours.

Auchinleck, MS. p. 108.

A. against B.

- No 3. A bond being assigned with the whole effects thereof, and all right that the cedent had to the said bond and sum therein contained, the assignation carries the assignee to have right to an inhibition served by the cedent upon the said bond, although the assignation contained no special mention of the said inhibition, yet seeing it was not specially reserved, it is presumed to have been disposed as accessory to the bond.

Auchinleck, MS. p. 108.

. See No 7. p. 6303. *voce* IMPLIED ASSIGNATION.

A. against B.

No 4.

INHIBITION may be raised and executed against an apparent heir.

Auchinleck, MS. p. 109.

SAMUEL BLACKBURN *against* JAMES LAMB.

No 5.

IN an action betwixt Samuel Blackburn and James Lamb, the LORDS found, that an infetment holden of the King, free burgage, would not stop the comprising, in respect the lieges were inhibited of before at the instance of the comprising. The like decided betwixt George Gibson and Alexander Them-