

It was *answered*, That the precept was from a Judge who was competent to discern in the sums contained in the registrate contract, upon which the precept followed, and the LORDS having interponed their authority to the inhibition, their deliverance made it a sufficient ground; so that the debt to which Mr Alison had right was contracted *spreta auctoritate*.

No 41.

THE LORDS repelled the objection proponed against the inhibition.

Reporter, *Lord Cullen*.Act. *Falconer*.Alt. *Gardah*.Clerk, *Gibson*.

*Fol. Dic. v. 3. p. 320. Edgar, p. 79.*

1725. July 8.

McLELLAN *against* ALLAN.

No 42.

INHIBITION being used by a creditor against a debtor who was cautioner in a bond to another creditor; and he having granted a bond of corroboration of his cautionary obligation, after the lapse of the seven years; it was found that the inhibition cut off the effect of this corroboration; for the cautioner being once free by prescription, could not revive the debt in prejudice of the inhibition, more than he could contract a new debt.

*Edgar.*

\* \* \* This case is No 61. p. 4967. *voce* FRAUD.

1727. June.

Competition CHARLES ROW with the other CREDITORS of RUSCO.

No 43.

It was objected against an inhibition, that there was nothing in the letters prohibiting the lieges to lend their money to the person inhibited, and to take bond or security therefor; that upon that account the inhibition could not strike against posterior bonds, though by these the heritage might be evicted. THE LORDS sustained the inhibition good against these bonds, in so far as they might affect the heritage, in respect of the general clause 'inhibiting and discharging the lieges, under whatsoever colour or pretext to buy, block, or receive any other manner of way, from the debtor, any of his lands, heritage, &c. in defraud foresaid.' See APPENDIX.

*Fol. Dic. v. 1. p. 472.*

1739. February 1. CARLYLE *against* the TRUSTEES of MATHISON'S CREDITORS.

No 44.

WHERE the bulk of a bankrupt's creditors had agreed to accept of a voluntary right from the bankrupt in favour of a trustee, who, to save expense, should

No 44. be empowered to sell and divide the price ; the subject being actually sold, and the price *in medio*, an inhibitor who had refused to accede to the trust-right, ' was not allowed to reduce,' in respect he could not allege the sale was at an under value, and that the price was *in medio*.

The like had been done some years ago in the case of the Creditors of Halgreen, where an inhibitor was not allowed to reduce a sale which had been made at an adequate price, and the price *in medio*, there being no prejudice to the inhibitor ; which, as it seems to have foundation in law, has great equity in it. And in the reasoning in this case, it was taken for granted, that in case he had been allowed to reduce, he must have found caution, that this subject when again sold, should yield a price not under what it stood now sold for.

*Fol. Dic. v. 3. p. 324. Kilkerran, (INHIBITION.) No 1. p. 285.*

No 45. 1744. June 19. CREDITORS OF SIR JAMES CAMPBELL, competing.

By the act 268, Parliament 15, James VI. it is required, That inhibitions should be executed at the head-burgh of the jurisdiction within which the debtor dwells, which accordingly was in this case done. Sir James Campbel's residence was in the shire of Argyle, and the execution of John Campbel's inhibition bore it to have been executed at Inverary, the head burgh of the shire, wherein his lands also lie. But it was *objected* as a nullity, That the execution did not bear Sir James's residence to be within the shire of Argyle, which the LORDS ' repelled.'

*Kilkerran, (INHIBITION.) No 4. p. 286.*

\* \* See Clerk Home's report of this case, No 24. p. 3697. *voce* EXECUTION.

1745. January 25. BAILIE KENNAN *against* DAWLINGS.

No 46. An inhibition marked on the back as registered in a stewartry, was found null, in respect there was no record of the stewartry for that year, and for some preceding and following it.

BAILIE — Kennan merchant in Dumfries, had right by progress to a wadset on the lands of Thrievengange, his authors having appraised it, and also obtained a voluntary disposition from the person in the right ; but the same being also appraised by the authors of William and Margaret Dawlings ; in a competition that arose between them, it was *objected* to Kennan's rights, that they were reducible upon an inhibition led 1665 by the Dawling's authors.

*Answered,* The inhibition was never registrated, though it is marked upon as if it were, 27th March 1665, which appears from this, that there is no book of the stewartry of Kirkcudbright, where the lands lie, for that year.

THE LORD ORDINARY, January 5th 1745, on advice with the LORDS, sustained the objection to the inhibition.