SECT. VII.

Six Knocks.

1589. *December.* MENZIES *against* ——.

No 121.
An execution of horning was reduced, because it mentioned not the six knocks.

THERE were letters of horning produced to debar ane *ab agendo* at the instance of ane Menzies. It was *alleged* against the first and three executions of the horning, That they were null in themselves, because there was mention made in the summons of the said —— at his dwelling house, because he could not be apprehendit personallie, and of the affixing of ane copy upon the yett, and because it was not contained in the executions that the officer had knocked at the yett six tymes, according to the act of Parliament James V. Parl. 6th, c. 75th, 'Anent the summoning of persons,' therefore the said executions were null in themselves.

Fol. Dic. v. 1. *p.* 267. *Colvil, MS. p.* 446.

1679. *December* 11. CASSILLIS *against* ROXBURGH.

No 122.

IN an execution of arrestment, found no necessity of knocks where the doors were patent.

Fol. Dic. v. 1. *p.* 267. *Stair.*

*** *See* This case, No 19. p. 3695.

1680. *July* 29.
HAY *against* The LAIRD of Pourie and the LADY BALLEGERNO.

No 123.
An inhibition found null, because the executions were at the dwelling-house, and a copy affixed, but did not bear six knocks at the door.

JOHN HAY of Murie, as donatar to the recognition of the lands of Murie, pursues declarator upon alienations of the major part, made by —— Lindsays, heritors for the time.—It was *alleged* for the Laird of Pourie, and the Lady Ballegerno, who now have right, That there was inhibition used before these deeds of alienation, whereupon there is reduction of the Lindsays' rights *ex capite inhibitionis*, so that after they were inhibited, as no disposition granted by them, or debt contracted by them, could hinder inhibition to take effect, so neither can these alienations infer recognition, in prejudice of the inhibition; but if thereby the Lindsays' right could be reduced, the donatar's recognition would fall in consequence, being founded upon their alienations; and if after inhibition, those who acquire unwarrantable and invalid rights, might, by their alienation of the

No 123.

greater part, without consent of the superior, or other feudal delinquence, infer recognition, and thereby evacuate the effect of an inhibition anterior to the delinquent's right, it were a compendious way for insolvent debtors, when inhibited, to disappoint their creditors by such delinquences; and therefore the recognition must be but prejudice to the inhibition, and with the burden of the sum upon which it proceeded.—It was *answered*, That inhibitions do not denude, or give any real right, but only hinder the person inhibited, to grant any voluntary right, which becomes null, as *spreto mandato* of the inhibition, so that it cannot hinder the casuality of the superiority; for notwithstanding, the vassal's liferent would fall, or his ward, and therefore so must the recognition upon his deeds; *2do*, This inhibition is *ipso jure* null, the executions bearing to be at a dwelling-house, and not bearing six knocks at the door thereof, as is prescribed in the act of Parliament, albeit it bear several knocks.

The Lords found the inhibition null, and so had no occasion to determine the effect of the inhibition against the recognition.

Fol. Dic. v. 1. *p.* 267. *Stair, v.* 2. *p.* 793.

1696. *July* 30. Sinclair *against* Lord Bargeny.

No 124.
It is not necessary that an execution bear that the messenger sought entrance before giving six knocks at the door.

In the declarator of the Lord Bargeny's escheat, pursued by Mr Archibald Sinclair advocate, it was *objected*, *1mo*, The execution of the horning was null, seeing it did not bear, that he sought entrance before giving the six knocks, as required by act 75th, Parl. 1540; and cited Durie, 28th March 1637, Scot *contra* Scot, *voce* Proof; and Stair, Tit. Confiscation.——The Lords found this would overthrow the most part of the executions in Scotland, and that this formality was sufficiently included in the six knocks.—*2do*, *Alleged*, It was still null, because, by the 268th act of Parl. 1597, all executions of horning executed against persons dwelling within bailiaries, ought to be registrate there; but the Lord Bargeny then lived within the bailiary of Carrick, and yet the horning is not registrate within the court books of that jurisdiction, and so is null.—*Answered*, The act of Parliament imposes no necessity, but declares registration there, shall be equivalent as if done in the Sheriff's books; so that at most it is but a cumulative jurisdiction with the shire of Ayr, and not privative; as appears by this, that the Earl of Cassillis, as heritable Bailie of Carrick, applied to the Parliament to get the bailiary and jurisdiction disjoined from the shire of Ayr, and it was refused him; likewise these bailiaries of Kyle, Carrick, and Cunningham, were the private patrimony of the Stuarts before they got the Crown in 1370, and were then erected by them into bailiaries, but not to subtract them from the sheriffdoms where they lay. If they were regalities, there might be more pleaded for it; but it is incongruous to erect the King's own lands into regalities, he possessing these privileges, (which he communicates to his subjects by granting them regalities) *jure proprio*. Some of the Lords were for trying the custom, whether or not the lieges had been in use to registrate their diligences