

1683. *Marob.* ELIZABETH STEVENSON *against* EDWARD GILLESPIE.

No 30.

THE execution of an inhibition being quarrelled as null, for that if executed personally, it did not bear that a copy was left; and if executed at the dwelling-house, it did not bear that six knocks were given;

*Answered*; The execution bears, that the messenger went to the dwelling-house and left a copy, and immediately thereafter acquainted the party that he had done so. *2dly*, The ground of the inhibition is only a destination in a contract of marriage in favour of heirs or bairns, which imports not a debt in a competition with true creditors.

THE LORDS waved the first allegeances as to the execution, and found, That the users of the inhibition, viz. the children, are to be looked upon as heirs of provision to the father, in so far as they compete with the father's true creditors, and so preferred the creditors, notwithstanding of the inhibition founded on the contract of marriage. See PROVISION TO HEIRS AND CHILDREN.

*Harcarse*, (INHIBITION.) No 632. p. 174.

1684. *February.* ANDREW FOOT *against* JOHN KEIRY of Gogar.

No 31.

AN inhibition being quarrelled, as not duly executed at the head burgh of the regality where the lands lay;

It was *answered*, That the execution was used in the English time, when regalities were suppressed, and the lieges did generally execute all diligence at the head burgh of the shire.

*Replied*; Regalities were only suppressed *quoad* their jurisdiction, and not *quoad* the place of execution appointed by the laws of this kingdom.

THE LORDS sustained the execution as lawful, for the reasons foresaid.

*Harcarse*, (INHIBITION.) No 635. p. 174.

1685. *March.* SIR JAMES COCKBURN *against* TROTTER of Mortonhall.

No 32.

SIR JAMES COCKBURN having inhibited Mr Alexander Spottiswood upon a wadset for a great sum, and thereafter lent 8000 merks to him as principal, and Mortonhall as cautioner, whereof Mortonhall made payment upon distress, and got an assignation to the bond from Sir James, with warrandice from fact and deed, and apprised Mr Spottiswood's lands; Sir James raised reduction of his apprising *ex capite inhibitionis*.

*Alleged* for the defender, That Sir James's assignation with warrandice imports a *non repugnantia* of all rights that then stood in his person. *2do*, The sums contained in the bond were paid for the back tack duties of the wadset,

A creditor inhibited his debtor, upon a wadset for a large sum, and thereafter lent her another sum upon a bond with caution. The cautioner paid on distress, and got assignation with warrandice.