

1686. *February.* DANIEL NICOLSON *against* PROVOST KINLOCH.

A DISPOSITION of lands, made by Provost Currie, being questioned upon the second part of the Act 1621, as a gratification, in prejudice of the pursuer's diligence by inhibition ;—it was alleged for the defender, That the inhibition was null as to the lands disposed, not being executed at the right cross of regality ; and a null inhibition is no diligence. Answered, The debtor being in effect bankrupt, any diligence, by the Act of Parliament, is sufficient to hinder gratification ; nor was the inhibition null for want of any requisite solemnity ; and, if the debtor had acquired any lands in the shire thereafter, the inhibition would have the effect of a formal diligence as to these, to hinder alienations by commerce, and so ought to obstruct gratification *quoad* others lying in the regality ; yea, inhibition, even personally executed, and at the market-cross where the inhibited party dwells, will hinder the alienation of heritable sums ; so that the pursuer's inhibition is a formal and habile diligence, as to some effects : The like holds as to the contracting of debt after inhibition, in so far as the inhibitor is thereby prejudged. The Lords assoilyed from the reduction ; but the matter of fact was not fully understood, whether it was commerce or gratification. *Vide* No. 151, [Dalrymple *against* Lyell, 1687, November 25 ;] and, No. 296, [Dempster *against* Morison, 1683, November.]

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1686. *February.* SIR JAMES COCKBURN *against* PROVOST MILN and OTHERS.

FOUND that a denunciation to the horn at the market-cross of Edinburgh, where the party did not live, was not a sufficient diligence to hinder gratification, since his escheat did not fall thereby ; and it was not a diligence *ordinata* to affect the goods, as other hornings are. *Vide* No. 140, [Cockburn *against* Miln, &c. February 1686.]

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1686. *February.* The LAIRD of LAMINGTOUN *against* JAMES OSWALD.

IN the improbation of a tack, at the instance of Lamingtoun *against* James Oswald, the defender produced a registrate extract in the year 1632, and contended, That, after so long a time, he could not be obliged to produce the principal,—especially the pursuer and his authors having homologated the same by their constant payment of the tack-duty. Answered, The tack is not quarrelled as to the verity of it, or the quantity of the tack-duty ; but as to the endurance, in respect the extract contains more years than the principal. The Lords stopped certification till the registers might be searched ; and inclined to sustain the tenor proven, in case it were not found.

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