

1624. *January 21.* L. CARNOUSIE *against* ———.

No. 13.

Suit sustained upon a licence to pursue.

In an action pursued by L. Carnousie against ———, wherein Carnousie, as executor to L. Barns, his brother, and as having licence granted to him by the Commissary of Aberdeen, to pursue for a particular debt owing to the defunct, which particular debt was left out of the principal confirmed testament, and came to the pursuer's knowledge since the confirmation, the Lords sustained the pursuit founded upon the licence to pursue granted by the Commissary, albeit there was a principal confirmed testament, wherein the pursuer was confirmed executor, and albeit it was not eked to the testament confirmed; and found, that it was not necessary to eke to the confirmed testament the particular debt libelled, seeing it was uncertain if the pursuer should recover the same or not, but that the licence gave sufficient interest to pursue, without ekeing the same; but ordained the pursuer to find caution to confirm, and make the same forthcoming to the defunct's creditors, or any having interest, in case he recover the same.

Act. *King.*Alt. *Lawrie.*Clerk, *Gibson.**Durie, p. 99.*1625. *July 2.* PORTEOUS *against* ELLIOT.

No. 14.

An heritable disposition and infeftment of land found reducible upon an inhibition served on a naked personal bond, without apprising.

In a reduction betwixt Porteous and Elliot of Stobs, the Lords found, That an inhibition served upon a moveable bond, for payment of sums to the creditor, was a sufficient ground of law to reduce a posterior heritable disposition and infeftment of lands granted by the debtor, who was prohibited after that inhibition; albeit it was alleged for the defender, that an inhibition upon a moveable bond, whereupon no more had followed, there being no real right, neither by comprising or otherwise, in the person of him who served the inhibition, whereby the land might be affected to him, could not be sustained as any sufficient ground whereupon the defender's real and heritable right of the lands might be reduced; which was repelled by the Lords, seeing the Lords found, that the pursuer might pursue reduction upon the said bond and inhibition, to the effect he might comprise, and that he might remove the impediment that would hinder his comprising, or stay him to obtain a real right. But it is to be marked, that inhibitions strike not against moveable bonds, and such other writs and deeds done anent moveables, by persons prohibited, after inhibition, which are only subject to arrestments, and heritable rights are subject to inhibitions.

Act. *Sandilands & Hart.*Alt. *Nicolson.*Clerk, *Hay.**Durie, p. 170.*

. The like found, 20th January, 1632, Haliburton against Monteith, No. 18. p. 6947. *voce* INHIBITION.