

1666. July 27.

L. BORTHWICK *against* KER.

No 22.

AN inhibition being raised upon the dependence of a pursuit for mails and duties, for three years preceding the summons, and in time coming during the defender's possession, it was thought that the inhibition relating only to the summons as to the three years preceding, without mention of the subsequent years, could not be a ground of reduction *ex capite inhibitionis*, in respect the defender in that pursuit was assoilzied as to the years before the summons, as being *bona fide* possessor; and albeit the summons was not only for these years, but for the time to come, as said is; and the defender was decerned to pay mails and duties for certain years after the summons; yet the lieges were not obliged to take notice of the summons, but as it was related in the inhibition.

THE LORDS were of this opinion; but the case was not decided, the pursuer having desired up his process that he might be better advised.

*Adv. Oliphant & Sir Robert Sinclair-*

*Dirleton, No 36. p. 15.*

1668. December 16.

SIR ALEXANDER FRAZER *against* ALEXANDER KEITH.

SIR ALEXANDER FRAZER, Doctor of Medicine, having purchased the lands of Miekelty from Andrew Frazer, who had apprised the same from Alexander Keith, pursues a declarator of the expiring of the apprising, and of his right of the lands thereby. It was *alleged* for Alexander Keith, That he had depending actions of reduction against the grounds of the apprising, and thereupon alleged, that the said sums were satisfied before the apprising, at least by the pursuer or his author's intromissions with the rents of the appraised lands, within ten years after the deducing thereof, during which time the legal was unexpired, by the late act betwixt debtor and creditor, whereby the legal of apprisings, led since 1652, are prorogated for three years. And as to the *first* point, he *alleged*, That the ground of the apprising being a minute of alienation betwixt the said Alexander Keith and Andrew Frazer, whereby Andrew disposes the lands of Miekeltie and Stranduff to the defender, the tenor of which minute is, That the said Andrew obliges himself to infest and secure the said Alexander in the said lands, and to purge all incumbrances thereupon; and that the price shall not be payable till the said Alexander be put in possession. There is also a commission therein granted to the defender, to purchase two expired apprisings, and to satisfy any other incumbrances, and to serve the said Andrew heir to Thomas Frazer his father, and to obtain the said Andrew infest as heir to his father, and likewise the defender himself in the lands; so that the right the

No 23.

Inhibition on a dependence was found ineffectual, where no judicial sentence followed, but a decree-arbitral on a submission. See Gosford's report of this case, p. 6956. who appears to have thought that the inhibition was sustained.