

No 23.

sing, but yet upon the ground thereof, there being an inhibition before the minute, and soon thereafter a decret-arbitral, decerning a part of the price of the land, due by Keith, to be paid in satisfaction thereof, which was intimated by arresting in Keith's hands;—THE LORDS. adhered to their former interlocutor, allowing the purchase thereof.

*Gosford, MS. No 65. p. 23. and No 101. p. 36.*

1670. June 17. LANGLANDS *against* SPENCE of Blair.

No 24.

It was the practice in regalities, to execute inhibitions at the head burgh of the regality, not at that of the shire.

LANGLANDS pursues Spence of Blair for reduction of his rights of certain lands granted by Hamilton of Blair, his author, because Hamilton was inhibited at the pursuer's instance, before he granted these rights to the defender. It was *alleged* for the defender, absolutor, because the inhibition was null, the question being of lands lying within the regality of Culross, and the inhibition was not executed at Culross, the head burgh of the regality, but at Perth, the head burgh of the shire; and for instructing that Culross was a regality, the Lord Colvil's infeftment was produced, which though it bear not expressly a regality, yet it bears a bailliary, with power to repledge, which imports a regality; and accordingly the bailie, and not the sheriff, makes count in Exchequer, and briefs are directed to the bailie, and there is produced an inhibition *anno* 1657, and another in *anno* 1666, executed at Culross. The pursuer *answered*, That Culross was never denominated, holden, or repute a regality, but a bailliary, and though the power of repledging be a special privilege of regality, yet there are many other privileges thereof, not consequent upon the repledging. *2dly*, The pursuer having followed the ordinary course, used the time of his inhibition, viz. by executing at the market cross of the head burgh of the shire, he hath produced three inhibitions about that same time, executed as his is; so that what was then holden repute to be the head burgh, is sufficient for him to make his legal diligence subsist; and for the inhibition executed at Culross in *anno* 1657, it cannot be respected, because it is known that at that time regalities were suppressed by the English; and for the inhibition in *anno* 1666, it might have been done of purpose, *pendente processu*, and cannot regulate the custom the time of the pursuer's inhibition, which was in *anno* 1633.

THE LORDS sustained the pursuer's inhibition, and reduced, for they neither found it clear that Culross was repute a regality, nor that the custom was to execute inhibitions there at that time, but at Perth, the head burgh of the shire.

*Stair, v. 1. p. 681.*