

No 32.
from fact and deed. The cautioner apprised the original debtor's lands. It was found the inhibition did not affect this diligence.

and being surrogated in place thereof, must have the like privilege as if Mortonhall had been cautioner for the back tack-duties, and assigned thereto. *3tio*, The money being lent by Sir James himself, for his own use and advantage, cannot fall under the prohibition of the inhibition.

Answered for the pursuer, The warrandice is qualified, viz. that Sir James had made no assignation, &c. and so restricted to such facts and deeds. *2do*, The bond bears borrowed money, without any relation to the wadset; and Sir James had no advantage by the lending of the money more than if it had been borrowed from another person to pay him; and it is ridiculous to think, that for his back tack-duties (for not-payment whereof he could have declared the back tack null) he would have weakened his security by the inhibition. *3tio*, If the inhibition should not take place against the apprising, Sir James would be prejudged, seeing the debtor's estate is very much incumbered; and the comprising, if it had the privilege of back tack-duties, would come in *pari passu* with the wadset for mails and duties; nor is the cautioner in any better case by the assignation from the cedent, than if he had comprised upon the clause of relief without an assignation.

THE LORDS found, That the warrandice of the assignation did not extend to the inhibition, which he was not obliged to assign; and that the bond and sums were surrogated in place of the back tack-duties for which they were paid, and had the privilege not to be prejudged by the inhibition. But this interlocutor not being consonant to decisions in other cases, the LORDS did not pronounce the same, but ordained the points to be debated *in presentia*.

Harcarse, (INHIBITION.) No 636. p. 175.

No 33.
If a party is within the kingdom, but absconds, inhibition may be executed against him at the market cross

1687. February 22. MUSHET of Calzihall against LORD MARR.

IN a reduction of a disposition *ex capite inhibitionis*, it was alleged for the defender, That the inhibition was null, in so far as it was not executed against my Lord Cardross, the party, personally, or at his dwelling-house, but at the market-cross of Edinburgh, pier and shore of Leith, and at the head-burgh of the shire, against the lieges, as if the party had been out of the country, whereas he was within the kingdom. *2do*, The inhibition proceeded upon a conditional debt, before the condition was purified. *3tio*, Bonds containing obligations to infeft in annualrents out of the debtor's lands in general, anterior to the inhibition, were the ground of the disposition.

Answered, The execution at the market-cross of Edinburgh, &c. was as sufficient a notification as if it had been executed personally, or at the debtor's dwelling-house; and if the debtor was then in the kingdom, he was absconding, and lying darned, and was reputed to be out of the country. *2do*, Inhibition may proceed upon conditional obligations, or *ante terminum*, to take effect after purifying of the condition, or elapsing of the term. *3tio*, The in-

hibition must impede any disposition of property; the obligation in the bond being to infest in annualrent.

No 33.

THE LORDS repelled the second allegiance in respect of the answer thereto; and, before answer to the first allegiance, ordained trial to be taken if my Lord Cardross was in Scotland the time of executing the inhibition, and if his being within the kingdom was publicly known; and, before answer to the third, ordained the bonds and infestments to be produced.

Harcarse, (INHIBITION.) No 640. p. 176.

1688. *June.* WATSON of Saughton *against* SIR ROBERT BAIRD.

No 34.

FOUND that inhibitions relative to lands in the barony of Brughton, should be executed at the cross of the Canongate, as the burgh of regality; and therefore found an inhibition as to the foresaid lands executed at the cross of Edinburgh, null and void.

Harcarse, (INHIBITION.) No 642. p. 177.

. Fountainhall reports this case :

1695. *February 26.*—THE LORDS having considered the bill and answers, between James Watson of Saughton and Sir Robert Baird of Saughtonhall; they reduced the said James's inhibition, because not executed at the market-cross of the Canongate; in regard they found it proved, that the lands of Dalry-mills lay in that regality. It was *argued* by some of the Lords, that it was evident the Abbot had dismembered them from his regality, and that they had always answered by suit and presence in the shire, being called in the suit rolls; and did serve heir in the sheriff-court, and not in the regality. But it was *replied*, That in heritable bailiaries, the Abbot could not disjoin; and in services, any of these jurisdictions were competent and cumulative. Saughton judging himself grieved by this interlocutor, gave in an appeal and protestation for remeid of law to the Parliament.

Fountainhall, v. 1. p. 673.

1697. *December 9.* MILL *against* NICOLSON'S CREDITORS.

No 35.

MERSINGTON reported the competition between Alexander Mill of Carridden, and the other co-creditors upon Sir William Nicolson's estate of Cockburnspath. Carridden had both adjudged and inhibited; but his adjudication was found null, because he had charged Sir William's son only to enter heir to his father, who was never infest in the barony of Cockburn's-path; whereas he should have charged him to have entered heir to his uncle Sir John, who

Effect, in a ranking of adjudications, of an inhibition found ineffectual as to certain lands, but good as to others.