

No 44. be empowered to sell and divide the price ; the subject being actually sold, and the price *in medio*, an inhibitor who had refused to accede to the trust-right, ' was not allowed to reduce,' in respect he could not allege the sale was at an under value, and that the price was *in medio*.

The like had been done some years ago in the case of the Creditors of Halgreen, where an inhibitor was not allowed to reduce a sale which had been made at an adequate price, and the price *in medio*, there being no prejudice to the inhibitor ; which, as it seems to have foundation in law, has great equity in it. And in the reasoning in this case, it was taken for granted, that in case he had been allowed to reduce, he must have found caution, that this subject when again sold, should yield a price not under what it stood now sold for.

Fol. Dic. v. 3. p. 324. Kilkerran, (INHIBITION.) No 1. p. 285.

No 45. 1744. June 19. CREDITORS OF SIR JAMES CAMPBELL, competing.

By the act 268, Parliament 15, James VI. it is required, That inhibitions should be executed at the head-burgh of the jurisdiction within which the debtor dwells, which accordingly was in this case done. Sir James Campbel's residence was in the shire of Argyle, and the execution of John Campbel's inhibition bore it to have been executed at Inverary, the head burgh of the shire, wherein his lands also lie. But it was *objected* as a nullity, That the execution did not bear Sir James's residence to be within the shire of Argyle, which the LORDS ' repelled.'

Kilkerran, (INHIBITION.) No 4. p. 286.

* * See Clerk Home's report of this case, No 24. p. 3697. *voce* EXECUTION.

1745. January 25. BAILIE KENNAN *against* DAWLINGS.

No 46. An inhibition marked on the back as registered in a stewartry, was found null, in respect there was no record of the stewartry for that year, and for some preceding and following it.

BAILIE — Kennan merchant in Dumfries, had right by progress to a wadset on the lands of Thrievengange, his authors having appraised it, and also obtained a voluntary disposition from the person in the right ; but the same being also appraised by the authors of William and Margaret Dawlings ; in a competition that arose between them, it was *objected* to Kennan's rights, that they were reducible upon an inhibition led 1665 by the Dawling's authors.

Answered, The inhibition was never registrated, though it is marked upon as if it were, 27th March 1665, which appears from this, that there is no book of the stewartry of Kirkcudbright, where the lands lie, for that year.

THE LORD ORDINARY, January 5th 1745, on advice with the LORDS, sustained the objection to the inhibition.

Pleaded in a reclaiming bill, the inhibition being marked by the clerk, is presumed to have been registered; and though it should be granted that if it never actually was, it would be null, yet the fatality of the loss of the record, ought not to affect a private person, who had not the charge of keeping it.

2do, Although the book were produced, and it appeared never to have been registered, yet being marked on the back, it ought to be sustained by the intention of the act 19, Parliament 1686, sustaining sasines so marked upon, which is declaratory of the act 16, Parliament 1617, establishing registers; for, it bears to be without prejudice thereof, which it could not be, if it statuted any thing new; and therefore the act 18, Parliament 1696, is to be considered as a new statute.

THE LORDS, on enquiring into the state of the register of Kirkcudbright, and finding there was no book from the year 1621, till 6th April 1665; so that it could not be presumed there ever was a book in which this was registered, 'refused the petition.'

Act. A. Macdouall.

Act Boswell.

Clerk, Kilpatrick.

D. Falconer, v. I. p. 57.

1745. June 27.

RUTHERFORD against STEWART.

AFTER the death of Colonel John Stewart of Stewartfield, John Stewart his son and heir granted bond of corroboration to Anna his sister of her bond of provision, containing only the principal sum and annualrents without accumulation, upon which she led adjudication.

In a ranking of the Creditors of Stewartfield, Rutherford of Bowland having objected to this adjudication, as proceeding upon the bond of corroboration granted posterior to an inhibition at his instance against the granter; the LORDS found, "That as the bond of corroboration contained only the principal sum and annualrents, and no accumulations, the inhibition did not strike against the same." Notwithstanding it was *argued*, That inhibition strikes against posterior voluntary rights; and that as to the effect of inhibition, every right is considered as voluntary, to grant which there is no preceding special obligation, such as the party can be compelled by process to fulfil; for as there was nothing in the bond of corroboration, but the original debt, against which the inhibition did not strike, and that the purpose of granting it was no other than to save the creditor the expense of a constitution, it was thought rather to be a catching at the words, than following the spirit of the law, to find that the inhibition affected the bond.

For the better understanding the ground on which this decision stands, *vide* Horsburgh of that ilk, *contra* Davidson, No 54. p. 6985.

Fol. Dic. v. 3. p. 322. Kilkerran, (INHIBITION.) No 5. p. 287.

No 46.

No 47.

Inhibition found not to affect an adjudication proceeding on a posterior bond of corroboration containing only principal sum and interest due by a former bond.