

No 2.

* * Durie reports the same case.

In an action of reduction at the instance of Erskine against the Lord Erskine, founded upon a reason of inhibition, THE LORDS found the inhibition null, because the command and warrant of the letters of inhibition gave power to charge the party, being then out of the country, upon sixty days, at the pier and shore of Leith, and at the market-cross of Stirling, being the head burgh of the sheriffdom where the party to be inhibited his lands lay ; but the saids letters had no further power, nor warrant therein contained, albeit the execution upon these letters, now used against the party exhibited, bore personally apprehended within the Cannongate, for doing whereof there was no warrant in the letters, so that the execution wanting a warrant of the letters, was not sustained ; and the LORDS repelled the allegiance proponed by the pursuer, to sustain the execution, *alleging*, that seeing the whole lieges were lawfully inhibited, as was necessary of the law, and that the execution against the party was only used to intimate the inhibition to him, the same was more clearly intimate by an execution made personally, than by any which had been made as against one out of the country ; and so that he having done not only equivalent to the command of the letters, but more nor was therein prescribed, his execution should be found lawful ; which was repelled as said is ; for the LORDS found, that he ought to have craved a command to do the same ; for albeit he might lawfully done the same, if he had sought it, and could not been refused ; yet not having sought the samen, he could not do it of himself without a warrant.

Act. *Cunninghame.*Alt. *Hope, Nicolson, & Aiton.*Clerk, *Hay.**Durie, p. 262.*

No 3.

A personal citation on six days, upon a summons which authorised edictal citation only, was sustained.

1628. February 2. L. KIRKCONNEL against L. BARNBARROCH.

IN a declarator of escheat by the L. Kirkconnel against the L. Barnbarroch, the summons being execute upon six days against the party defender personally apprehended, where the warrant and command of the letters did bear a desire, to summon him upon sixty days, as being out of the country, and no further anent the citation of the party, being contained in the will and desire of the summons ; and the defender *alleging* the execution to be null, seeing there was no warrant in the summons to cite and summon the party after that manner, and the same could not be done by any person at their own hand without a warrant ; this allegiance was repelled, and the citation was sustained. But this is disconform to the decision betwixt the L. Erskine *contra* Erskine, No 2.

p. 3681, except that that was found in the execution of an inhibition, which tending to make a posterior heritable alienation to be null and to fall, required a more strict warrant and process, after the nature of the warrant, as it is craved by the party's self, and is a greater contempt of the Judge, than a citation upon a summons, which is but the beginning of a process, and thereafter hath a progress of a judicial procedure, whereas inhibition is more odious and strict.

No 3.

Act. *Belcher.*Alt. *Nicolson.*Clerk, *Gibson.**Fol. Dic. v. I. p. 258. Durie, p. 338.*

* * Auchinleck reports the same case.

Letters raised to summon a party upon sixty days, by reason he is out of the country, the summons is executed against the party personally apprehended. The execution is quarrelled as wanting a warrant. The LORDS sustain the execution.

*Auchinleck, MS. p. 218.*1628. *March 19.*LAMB *against* BLACKBURN.

In a reduction James Lamb against Blackburn, for reducing of an inhibition, by reason that the command and charge of the letters bore, 'to prohibit the party at the market-cross of Edinburgh, pier and shore of Leith, and other places needful,' because the party was out of the country, for these are the very words of the letters, and this party was only prohibited at his dwelling-place, for the which there was no warrant; and the defender *alleging*, that seeing the inhibition was executed against the party at his dwelling-place, and that the letters bore as said is, to prohibit him at all other places needful, he doing the same at the party's dwelling-place, it behoved to be found sufficient; likeas the same was executed at the market-cross, and pier of Leith, against all the lieges *in genere*, and the party being one of the King's lieges, behoved to be found comprehended within that execution, and so the warrant of the letters was obeyed. This allegiance was repelled, and the reason sustained, for the letters gave no warrant to prohibit the party at his dwelling-place, for that was not craved therein, and the execution against the lieges at the market-cross and pier of Leith, could not extend to the party, because thereby the lieges were prohibited to receive alienations from the party to be prohibited to annailzie, who was not thereby prohibited to make alienation to the lieges, which ought specially to have been done against him. And the defender thereafter *alleging*, that in another action pursued betwixt Mr John Archibald and this same pur-

No 4.
Found in conformity with
No 2. p. 3681.