1670. *June* 14. SIR ARCH. MURRAY of Blackbarronie *against* BARROWMAN.

SIR ARCHIBALD MURRAY of Blackbarronie pursueth reduction of a disposition, granted by the Laird of Cringelty to this defender, after an inhibition served against Cringelty; to which inhibition Blackbarronie has now right, *ex capite inhibitionis.* (*Vide 28th Feb.* 1679.)

ALLEGED for the defender,—That his disposition can never be reduced *ex capite inhibitionis;* because albeit the same be posterior to the inhibition, yet the ground and cause whereupon the disposition proceeded, *viz.* a decreet-arbitral betwixt the party inhibited and this defender, at the least, the submission whereon the said decreet followed, were prior to the inhibition; and so the disposition must be drawn back *ad suam causam et causam causæ, viz.* the submission, and will never fall under the compass of that inhibition.

To which it was ANSWERED,—1*mo*, They opponed their inhibition, which was prior to the very submission. But, 2*do*, *Non relevat* to say that the inhibition behoved to be before the submission; seeing it is certain that the inhibition will reach this disposition, if it was served any time before the decreet-arbitral, wherein there was a specific obligement on the party inhibited, to dispone these lands to the defender. And this must be reputed to be the same very case with that where a party inhibited grants disposition of his lands, or other infeftment proceeding only upon a bond merely personal, and bearing no obligement to dispone or infeft; in which case, such a disposition proceeding upon debts prior, will never sustain against an inhibition, and so neither must it in our case.

It was REPLIED,—That the inhibition was indeed served against Cringelty personally, before his entering into that submission with the defender; but that the said submission, (whereon followed the decreet-arbitral obliging Cringelty to dispone thir lands,) was entered into before that the said inhibition was executed at the head burgh of the shire where thir lands disponed lay, and so before that the lieges were *in male fide* to take rights, or others, from the party inhibited, of lands lying in *eo districtu vel territorio* where the inhibition was not as yet executed; nor before that, was the party inhibited put *in mala fide* to dispone such lands, or to enter into a submission anent his rights of them.

It was DUPLIED,—That albeit the inhibition was not as yet a complete and perfect right, yet the creditor, server of the inhibition, being *in cursu diligentiæ,* nothing can be done by the debtor in prejudice of his begun diligence: otherways all inhibitions in the world might be frustrated and eluded. For I put the case that a person is inhibited personally here, but his estate lies in Orkney: next day after, he dispones his land there; whereas it will take a considerable time ere it can be executed at the market cross of Kirkwall: will any man in reason say to me that such a disposition should defend against the said inhibition already executed against the debtor personally?

And my Lord Newbyth being Ordinary, inclined to sustain the duply. And himself called to mind, that the Lords tended much to find the like allegeance relevant in a case betwixt Mr. John Eleis and one Wishart. Only in that case, I am informed, there were great presumptions to make appear that the same was done in defraud only of the creditors' begun diligence by inhibition, and that the disposition

was to the disponer's own behoof. However he gave them the Lords' answer on it.

Act. Sinclar. *Alt.* Wallace.

Advocates' MS. No. 12, *folio* 72.

1670. *June* 14. HALIBURTON *against* F. SCOT, Keeper of the Minute Book.

THIS was a reduction of a right upon the act of Parliament 1621, as done *inter conjunctas personas*, without any true or onerous cause. My Lord Newbyth, (because of the act of sederunt appointing all reasons of reduction to be heard in the Inner House, unless there were a warrant to the Ordinary in the Outer House to hear them,) refused altogether to hear them on their reason, seeing there was no warrant lying in process; and this, although the defender was content to dispense with the want thereof, and was earnest to be heard *in causa*.

Advocates' MS. No. 13, *folio* 73.

1670. *June* 14. The TOWN of ANNAND *against* GRAHAME.

THIS was a pursuit for some customs granted by the Parliament in 1661, to this burgh, of all beasts driven through their privileges, either from Scotland or Ireland, to England.

ALLEGED,—Thir customs was not contained in their charters of erection, but was only given by an unprinted act of Parliament, which are ever impretate *periculo petentis*. My Lord Newbyth inclined to sustain such a custom, if the said town would prove they had been in possession thereof: though it was alleged that no possession, though of never so long a time, can validate an unlawful custom tending to oppression, as this does; and adduced the practique of *the Burgh of Lithgow and the Fleshers of Edinburgh*, out of Dury, 15*th November*, 1621. He was ordained, before answer, to produce his practiques he founded on.

Chalmers and Hog. *Advocates' MS. No.* 14, *folio* 73.

1670. *June* 15.

Referente Domino Gosfuird, the Lords found a declarator of bastardy needed not to be continued, *ob favorem fisci;* but the pursuer behoved to take a day to prove his summons, viz. that such a person, the gift of whose bastardy he craves may be declared, was gotten on a woman who was never married to the said person's father, and this by witnesses: Notwithstanding, it was alleged, that bastardy was a negative, and so could not be proven, but proved the self; 2*do*, That it was impossible to prove it now by witnesses, since the bastard was sixty