

1671. June 28. FORBES of Watertoun against SHEIN.

No 25.

FORBES of Watertoun pursues reduction of an apprising *ex capite inhibitionis*. The defender *alleged* absolvitor, because the bond which was the ground of the inhibition is satisfied, in so far as there followed thereupon an apprising, which came in the person of the debtor's apparent heir, and so is redeemable from him for the sums he truly paid, by the act 1661, cap. 62, betwixt debtor and creditor; and it is offered to be proved, that the sums he paid are satisfied by intromission with the rents of the appraised lands, or what is wanting the defender will instantly satisfy or purge. It was *answered*, That albeit the act of parliament had declared that appraisings might be satisfied by payment of the true sums paid for them by the apparent heir, that cannot extend to this bond, or inhibition, or reduction thereupon; for the pursuer may pass from his apprising, and yet make use of the bond, and this allegiance will only be relevant when he insists upon his apprising.

THE LORDS found the defence relevant, that the satisfaction of the apprising on the bond did to all effects satisfy and extinguish the bond itself.

*Stair, v. 1. p. 742.*

1676. July 7. FINLAY against LITTLE.

No 26.

QUINTIN FINLAY pursues reduction *ex capite inhibitionis* against Little of Libberton, who *alleged* absolvitor, because the inhibition is null, as being executed at the house of the person inhibited, not designing where the dwelling-house was. It was *answered*, That the executions bear 'The within designed John Lindsay's dwelling-house,' who is designed within 'merchant burghess of Edinburgh.' It was *replied, non relevat*, seeing that does not import that he was indweller in Edinburgh, for many merchants, burghesses of Edinburgh, are not residents. It was *duplied, præsumitur residens*, unless another domicile were condescended upon and offered to be proved.

THE LORDS sustained the inhibition, unless another domicile were offered to be condescended upon and proved.

*Stair, v. 2. p. 442.*

1680. January 7. HAY against The LADY BALLEGERNO.

No 27.

JOHN HAY being infest in the lands of Murie, pursues the Lady Ballegerno, and others, for reduction and improbation of any rights they can pretend to that land, and craved certification *contra non producta*. The defender alleged no certification, because the pursuer's title is reduced *ex capite inhibitionis*. The

An inhibition which designed the person inhibited 'Merchant Burghess of Edinburgh,' sustained, tho' the execution bore only that a copy was left at his dwelling house 'within writ-ten.'