

1669. February 12. LITHGOW *against* EUPHAN HERRIOT.

No 68.

Lands within a shire being annexed to a regality *quoad* jurisdiction, an inhibition served at the head burgh of the shire only is valid.

IN the reduction of an inhibition executed at Euphan Herriot's instance against Thomas Lithgow, upon a bond granted to the said Euphan, which Thomas had thereafter disposed his lands to Mr John Lithgow, the libelled reason was, the inhibition was not lawfully executed at the market cross of Dunse, whereas the lands disposed to the pursuer were within the regality of Melrose. This reason was repelled, in respect of this answer, that the saids lands were not originally within the regality when it was erected, but were only annexed as to the jurisdiction of answering to courts by the Earl of Haddington, after he got the right of regality; as likewise, that notwithstanding thereof, all denunciations and legal executions have been in use and custom to be made at Dunse and Greenlaw, as the head burghs of the shire.

Fol. Dic. v. 1. p. 262. Gosford, MS. No 113. p. 41.

1680. February 25.

The EARLS of SOUTHESK and NORTHESK *against* The LAIRDS of POURIE, BANDOCH, and Others.

No 69.

An inhibition was sustained, though not executed at the market cross of the regality in which the lands lay, because it was executed in the Usurper's time, who abolished all regalities.

THIS was a competition betwixt a voluntary disposition and a prior compriser, who raised a reduction *ex hoc capite*, that the disposition flowed *a non habente potestatem*, from one denuded:—*Answered*, The compriser being *in mora*, and using no diligence, Bandoch was in *bona fide* to buy the land, finding nothing to impede him at the ordinary registers. *Replied*, A comprising hath at least the force of an inhibition.—THE LORDS found, the compriser being negligent by the space of 12 or 14 years, in not obtaining infestment, nor charging the superior, nor using diligence, to recover the possession by action of mails and duties, or otherways, the posterior voluntary disposition was preferable, because such apprisings are presumed to be simulate for the debtor's behoof. The same is decided in Durie, 4th July 1627, Hamilton against M'Culloch*. In that same cause, an inhibition was sustained, though not execute at the market cross of the regality of Killymuir, because it was published in the Usurper's time, who abolished all regalities, though it was alleged his authority could not change acts of Parliament; and, that even in the English time, they were in use to publish inhibitions and other diligences at the regality market cross.

Fol. Dic. v. 1. p. 262. Fountainball, MS.

* There is no such case in Durie as Hamilton against M'Culloch. The case referred to may, perhaps, be Hamilton against Tenants of Drumrash, p. 843. of Durie, *voce* JUS TERTII.