

1745. July 27. JAMES DUNBAR *against* CREDITORS of Grangehill.

ALEXANDER DUNBAR, proprietor of some houses in the town of Forres, and of some burrow-acres adjoining to the town, locally within the shire of Elgin, had no domicile but in the town; but being married to a daughter of John Grant in Braehead of Botrifney, within the shire of Banff, he lived with his father-in-law for some time after the marriage; and, particularly, was living with him in the year 1726, when an inhibition was executed against him by Henry Mill one of his creditors. The inhibition was executed against him personally at his father-in-law's dwelling-house the 1st of January; upon the 2d, the lieges were inhibited at the market-cross of Elgin, head burgh of the shire of Elgin, within which shire the debtor's estate lay; and, upon the 24th, the letters of inhibition, with the executions, were recorded in the Sheriff-court books of the same shire. Soon after the date of this inhibition, Alexander Dunbar the debtor left the house of his father-in-law, and took up his residence at his own house within the shire of Elgin, where he was living when he sold his estate to Alexander Dunbar of Grangehill, a gentleman of the same shire.

In a ranking and sale of the estate of Grangehill, preference was craved for the inhibiting debt upon the subjects purchased by Grangehill. It was *objected*, That the inhibition being executed against the debtor at his only residence at Braehead of Botrifney, within the shire of Banff, ought to have been published at the head burgh of the same shire. *Answered, imo*, As the law regards only a constant known dwelling-house, and not an occasional residence, the inhibition was published properly at the market-cross of the shire where the debtor's only dwelling house was. *2do*, Supposing publication in Banff-shire requisite to give the inhibition an effect against the whole lieges, the neglect of publishing it there will not justify an inhabitant of the shire of Elgin to purchase, *spreta auctoritate*.

It was admitted in the reply, that an inhibition recorded in one jurisdiction is not effectual as to land in another jurisdiction; but it was *urged*, that publication must necessarily be at the head burgh of the jurisdiction where the party dwells for the time; that in no case is it regular to execute an inhibition personally at a debtor's dwelling-house within one jurisdiction, and against the lieges at the market-cross of another jurisdiction; and, therefore, that this inhibition is *funditus* null for want of due publication.

'THE LORDS sustained the objection to the inhibition, that the same was not published within the jurisdiction where the debtor lived at the time of executing.' See This case reported by Kilkerran, No 25. p. 3699.

*Fol. Dic. v. 3. p. 187. Rem. Dec. v. 2. No 74. p. 115.*

No 34.  
An inhibition executed against the debtor in the shire where he resided at the time, ought to be executed against the lieges in the same shire.