

* * Haddington reports this case :

No 80.

IN the action betwixt Robert Kirkwood and John Belshes, for reduction of John's infeftment of the Tofts, as granted after that William Douglas, John Belshes' author, was inhibited at Robert Kirkwood's instance ;—THE LORDS sustained an inhibition raised against an apparent heir, who was neither served nor charged heir ; and found, that whenever the apparent heir entered heir, the inhibition convalesced and was drawn back to the time of the serving thereof, and was a lawful ground to reduce all alienations made by the apparent heir, since the date of the inhibition.

Haddington, MS. No 2888.

1627. June 23.

M'MILLAN against GORDON.

No 81.

A tack of teinds, clad with possession, preferred to a prior tack let by the same author, but on which there was no possession, altho' inhibition was executed on the first tack, before granting the second.

MR JOHN M'MILLAN being assignee by Thomas Ferguson to certain teinds, which Thomas was made subtacksman of the same to Mr Gilbert Gordon of Shirmes, who was principal tacksman of the same, pursues John Gordon of Troquhan for the same, and refers the quantity to his oath ; and, after the day of compearance, a term being assigned to his procurator to exhibit him to depone, at the term he compeared by his procurator, and proponed an exception, which the Lords found might be proponed *in eo statu processus*, albeit it was contended, that it could not be received then ; and the exception being, that the defender had a subtack of the said teinds from the said Mr Gilbert Gordon, their common author, by the space of four years before the year controverted, which albeit it was after the alleged subtack set by him to Thomas Ferguson the pursuer's author, and who also had served inhibition thereupon before the excipient's subtack ; yet, seeing the excipient's tack was clad with possession continually since the date thereof, and seeing that he offered to prove, that the said Mr Gilbert was ever in possession of the teinds for all years, until the time of the defender's right, notwithstanding of the said subtack set to Ferguson, which took never effect by possession ; the same therefore, albeit preceding his right, and inhibition executed thereupon, also before his subtack, cannot put him in *mala fide* to have taken his tack, and bruiked the teinds since the date thereof, viz. *anno 1622*. This exception was sustained to elide this pursuit, and was admitted to probation.

Act. ———.

Alt. *Belshes.*

Fol. Dic. v. I. p. 473. Durie, p. 299.