

No 20.

1636. *January 26.* LADY BORTHWICK *against* KER.

FOUND that a reduction of an infeftment at the instance of a prior inhibitor, could not hinder the said creditor, who was lawfully infeft, from using his infeftment against any other person, especially to defend his possession against others who could pretend no interest in the inhibition.

*Fol. Dic. v. 1. p. 476. Durie.*

\* \* \* This case is No 28. p. 1748. *voce* BONA FIDE CONSUMPTION.

No 21.

1664. *June.*KAE *against* STEWART.

A pursuer of an action raised inhibition on the dependence. The parties afterwards entered into a submission, and after decree-arbitral was pronounced, a new inhibition was raised. Found that the former inhibition was thereby passed from.

JAMES KAE being obliged to pay to William Kae, his brother, 5100 merks, by bond 1622, and William having raised a process of transferring against James Kae, son to his brother James, he serves inhibition upon the dependence in *anno* 1641, and in *anno* 1643, obtains decret of transferring. Thereafter, in *anno* 1650, there being a submission betwixt the parties, decret-arbitral is pronounced, by which the said James is decerned to pay to the said William the sum of 2000 merks, in full satisfaction and complete payment of the said 5100 merks, and hail annualrents thereof, and William is decerned to discharge the same, with the bond and all that has followed thereupon; upon which decret-arbitral William serves inhibition also, and upon both first and second inhibitions he intends reduction of certain bonds and deeds done by the father James, not only before but after the decret-arbitral; against which it was *alleged* for the defenders, That they ought to be assoilzied, in so far as concerns deeds done before the decret-arbitral, because the first bond and inhibition is innovated by the submission and decret-arbitral, by which 2000 merks is decerned to be paid in satisfaction and complete payment thereof, and William ordained to discharge same. It was *answered*, That the sum not being paid, and the discharge not being granted, his prior right should stand till he be satisfied by the decret-arbitral. *Replied*, The prior bond and inhibition is satisfied by the decret-arbitral, which is made use of and homologated by William, by having raised a new inhibition thereupon, which can only furnish action of reduction of deeds made after the same.

Which accordingly the LORDS found, after serious consideration of the decret-arbitral, and the whole debate thereupon.

*Gilmour, No 101. p. 77.*