

a contract, and an infeftment made by the said George to the said David after inhibition was executed against the said George at the instance of the said John Brown, it was *excepted* by the said David, That he ought to be assolizied from the reduction, because the sum contained in the contract and infeftment following thereupon craved to be reduced, was the duty of a tack set by the defender to the said George before the inhibition was raised and executed, and so he might lawfully take a new security therefor, notwithstanding of the inhibition. To which it was *replied*, That the decret (if any was obtained) for the tack duty, was obtained after the inhibition, and being a voluntary deed of the party inhibited, cannot take away the force of the inhibition. THE LORDS repelled the exception in respect of the reply.

No 94.

And this cause being again disputed 23d July 1631, the Lords reduced the said contract in so far as it might be a ground of infeftment for greater sums than were contained in the bonds made by the defender before the inhibition.

Auchinleck, MS. p. 109.

1633. March 9. FLEMING *against* HIS CREDITORS.

No 95.

CAPTAIN FLEMING being addebted to sundry creditors, and inhibited at the instance of ——— one of them, after inhibition, he makes disposition of the lands of Katherline for payment of certain others his creditors for sums addebted to them before the inhibition. ———, at whose instance he was inhibited, pursues reduction of the infeftment granted to ——— *ex capite inhibitionis*. It was *alleged* against the reduction, That his infeftment was granted for payment of true debts owing to C. A. before the inhibition which were specially inserted in his disposition, and so ought to be drawn back *ad suam causam*. To which it was *answered*, That although the debts for which the infeftment was granted were anterior to the inhibition, yet seeing by the said bonds, the debtor was not obliged to infeft them in his lands, in which case, the infeftment would have been sustained, but being personal bonds, the debtor could by no voluntary deed make prelation of one creditor to another, who had used greater diligence by serving of inhibition. THE LORDS repelled the exception in respect of the reply.

Auchinleck, MS. p. 110.

1639. March 6. L. SCOTSTARBET *against* BOSWELL.

No 96.

THE L. of Scotstarbet pursues reduction against William Boswell, for reducing of a contract of alienation of the lands of Pitodrie, made by David

A party who was, prior to inhibition, bound to dis-

No 96.
pone lands,
executed the
disposition
after inhibi-
tion. The
disposition
was not only
sustained, but
preferred to
a posterior in-
feftment giv-
en to the in-
hibiter.

Boswell to the said William Boswell, defender, redeemable upon payment of 10,000 merks, with an inhibition served by the said William upon the said contract; the reason was founded upon a disposition of the said lands, irredeemable, made by the said David Boswell to Henry Mauld of Melgum, who was infest, and which Henry had disposed the same to Sir John Scot pursuer; and the defender *alleging* against this reason, that it was not relevant, seeing both the pursuer's right, and his author's, are after the excipient's contract and inhibition; and as the same are in law good grounds to reduce the pursuer's rights libelled, so must they be found good grounds to elide this reason. The pursuer *replied*, that albeit the contract and infestment granted to his author be after the defender's contract and inhibition, yet there was an anterior contract preceding the defender's contract and inhibition, by the which the said David Boswell sold to the said Henry Mauld the said lands; and the posterior disposition of selling of the said lands, albeit done after the inhibition, yet the same depending upon that contract, which preceded the said inhibition, the said subsequent infestment granted thereafter, and contract, ought to be drawn back to the first, and the intervening inhibition cannot be found any impediment to have stayed the acquiring of the second right depending upon the first, and made conform thereto. The LORDS repelled the allegiance, and found, that the intervening of the defender's contract and inhibition, betwixt the pursuer's author's first contract, and before the pursuer's author's second contract, was no impediment, but that his said author might lawfully perfect the contract after that inhibition, seeing the same depended upon the prior contract before the inhibition; and that the second was made according to the first, and for implement thereof.

Act. *Advocatus.*

Alt. *Gilmore & Sibbald.*

Clerk, *Hay.*

Fol. Dic. v. 1. p. 474. Durie, p. 879.

No 97.
Inhibition
found not to
reduce a pos-
terior infest-
ment in life-
rent granted
by a husband
to his wife
being in im-
plement of
a contract of
marriage
prior to the
inhibition,
tho' the hus-
band was not
bound to in-
fest his wife
in these
lands in par-
ticular.

1672. February 10.

RIGG against BEGG.

IN a competition for the mails and duties of certain tenements in Edinburgh, Elizabeth Rigg being infest in liferent for implement of her contract of marriage, and Thomas Begg having appraised the same tenements, and being infest after the said Elizabeth, she craved preference, as being first infest; whereunto it was *answered*, that albeit Begg's infestment be posterior, yet the common author was inhibited before her infestment at Begg's instance upon the same sum whereupon she appraised, and is infest, and repeated his reduction upon the inhibition. It was *replied*, That albeit the relict's infestment be posterior to the inhibition, yet it is for implement of a contract of marriage, which is prior to the inhibition, and bears an obligation to infest her in lands