ly fulfilled; far less can it be opponed against the pursuer, who is assignee, and singular successor, seeing also his author is responsal to fulfil his bond; the LORDS found, seeing the assignee who pursued, insisted to have declarator upon that order, which was used, not by himself, but by his author, who granted the bond excepted on; that therefore the same which might have been proponed against the user of the order, was competent against the assignee thereto, for the order being used by the cedent, the excipient quarrelled the order, that that order could not be sustained, whoever was the person user theeeof; in which case the pursuer insisting on that order, he is not to be reputed a singular successor; whereas if he, as assignee to the reversion, had used an order at his own instance, *eo casu* the bond would have met him; therefore the LORDS found, that before any sentence of declarator should be pronounced upon that order, that the redeemer by virtue thereof should consign in the clerks hands, to be given up to the defender, that sum contained in the said last bond; but they sustained the order as lawful, and would not put the party to use any new order of redemption, the sum being consigned. No 89.

In this same process of Bennet against Bennet, the defender proponing another exception on another bond, by which, he to whom the reversion is granted, after the reversion, granted him to have received 280 pounds from the defender, and obliged him to repay the same at Whitsunday 1618, otherways he renounces the reversion, and the said sum not being paid, and the order used by him before the same Whitsunday; therefore, as this would have excluded the user of the order, so should it exclude the pursuer, insisting upon that order; likeas he *alleged*, That by the contract of wadset libelled, it was provided, that no redemption should be used, while he was refunded of all his costs, skaiths, and expenses, debursed by him, in Turnbul's default, and he had debursed the sum of 280 pounds, *ergo* the same should yet at least be repaid; THE LORDS found, that seeing the renunciation of the reversion was not registrated, conform to the act of Parliament, that the allegeance thereupon could not be opponed against the pursuer, who is a singular successor, albeit it might have militated against the maker of the bond; and also repelled the other allegeance, seeing the sum of the bond being borrowed money, could not come under the clause of the contract, anent the expenses, which was of another nature; and also found, that it could not be proponed against this assignee.

Act. *Mowat.* Alt. *Taylor.* Clerk, *Gibson.*

*Fol. Dic. v.* 1. *p.* 559. *Durie, p.* 606.

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1676. *February* 12. CRUICKSHANKS *against* WATT.

THE LORDS found, that a disposition being made after inhibition, but before the registration of the same, may be reduced *ex capite inhibitionis*, seeing the No 90.

No 90. execution of the inhibition doth put the lieges *in mala fide*; and after the same is complete, and thereby the debtor and the lieges are inhibited to give and take rights, the inhibition *ipso momento* thereafter is valid and perfect; but *resolvitur sub conditione*, if it be not registrated in due time.

Clerk, *Hay*.

*Fol. Dic. v.* 1. *p.* 557. *Dirleton, No* 254. *p.* 122.

*** Stair reports this case:

Cruickshanks pursues a reduction of a wadset right granted to Watt by their common debtor after inhibition, upon this reason, viz. *ex capite inhibitionis*, as being posterior to the publishing of his inhibition. 'It was *answered*, not relevant, unless it were libelled posterior to the registration of the inhibition; for the lieges cannot know inhibitions but by the registration. The pursuer *duplied*, That if this were sustained, all inhibitions would be evacuated; for after the publication thereof, the debtor would no doubt dispone to others before the registration; but the pursuer hath libelled his reason, as it hath always been sustained.

The Lords found the reason relevant from the publication of the inhibition.

*Stair, v.* 2. *p.* 321.

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1686. *March* 16. Bailie Gartshore *against* Sir James Cockburn.

No 91. A creditor having executed an inhibition against Sir Walter Seaton his debtor, personally, upon the 1st of February, and published it at the market-cross of Linlithgow upon the 4th, registrated the same upon the 6th day. The debtor, upon the 2d of the said month of February, subscribed a minute of sale of his lands to another creditor, which was quarrelled both as a gratification of one creditor after inhibition at the instance of another, contrary to the act of Parliament 1621, and anticipation of the inhibiter's diligence when he was *in cursu*.

*Answered*; The inhibition was not registrated till four days after the minute; and diligence is only to be considered after it is public by registration.

The Lords reduced the minute as a gratification to a creditor, and unlawful anticipation of another's diligence.

*Fol. Dic. v.* 1. *p.* 559. *Harcarse. Fountainhall.*

*** This case is No 143. p. 1051, *voce* Bankrupt.