

No 99.

worth than any sums of money lent him, and doing real diligence by inhibition and comprising, which incapacitates the common debtor to make any voluntary right; notwithstanding thereof, upon pretence of a personal bond, he shall be judged to have as full power to infeft when he pleases, as if he were not inhibited; and albeit the case was only as to the effect of an inhibition, yet it seems in reason that no more can be said for a comprising, they being both founded upon one principle of law, viz. to incapacitate a common debtor, by any voluntary rights, to prejudge lawful diligence.

*Fol. Dic. v. 1. p. 474. Gosford, MS. No 787. p. 494.*

1675. July 22. GORDON *against* SEATOUN and Others.

No 100.

Inhibition found not effectual to reduce infeftments following on anterior bonds, containing obligation to infeft generally or particularly.

SIR GEORGE GORDON of Haddo pursues reduction of the rights of certain lands *ex capite inhibitionis*. The defenders *allege*, That their infeftments, though posterior, yet are granted for debts anterior, containing an obligation to infeft the creditors in the debtor's lands therefor, and so the infeftments are no voluntary right, but such as the granter might have been compelled to grant. It was *answered*, *Non relevat*, unless the obligation were special to infeft in particular lands, for such a general obligation is not sufficient.

THE LORDS found the inhibition not to be effectual against infeftments for satisfaction of prior bonds, containing obligations to infeft generally or particularly.

*Fol. Dic. v. 1. p. 474. Stair, v. 2. p. 360.*

1681. June 23. GARDNER *against* BRUCE.

No 101.

Inhibition found not a sufficient ground for reduction of a posterior disposition, made in implement of a prior obligation.

PATRICK GARDNER having apprised from William Baillie of Torwood-head, all right to the lands of Torwood-head, and being infeft thereon, pursues the tenants for mails and duties. Compearance was made for Michael Bruce, who craves preference, because he was infeft in an apprising against James Lord Forrester, of all rights he had to the lands of Torwood-head; and albeit Gardner's apprising and William Baillie his author's infeftment appraised, be prior to Bruce's apprising, yet both rights flowing from James Lord Forrester, he was inhibited upon the grounds of the apprisings, before he disposed to William Baillie his brother; and he repeats his reduction *ex capite inhibitionis* of William Baillie's right, which was a wadset from the Lord Forrester, as being after his inhibition, wherewith Gardner's apprising from William Baillie falls in consequence. It was *answered* for Gardner, That inhibitions do only reduce posterior voluntary rights, but cannot reduce William Baillie's right, because it was necessary, and James Lord Forrester might have been

legally compelled to grant the same, in so far as, by his contract of marriage, Lieutenant-General Baillie was obliged to infeft the said William Baillie in an annualrent out of his lands, for security of 40,000 merks; in which contract by the general clause in the beginning thereof the whole contract proceeds with the mutual consent of Lieutenant-General Baillie, and James Baillie his son, thereafter Lord Forrester; and a disposition of annualrent *de presenti*, with consent of any other party, would carry that consenter's right, and oblige him to grant infeftment; so the obligation of one, with consent of another to grant such an infeftment, doth oblige that consenter to grant the same. It was *replied*, that though special obligations to infeft in particular lands, anterior to inhibitions, hinder the party inhibited to perform *in forma specifica*; yet here the obligation by Lieutenant-General Baillie was only general, and his son's consent can only import *non repugnantiam*, but could never compelled him to grant the infeftment himself. *3tio*, The Lieutenant-General's obligation was to infeft in an annualrent, and his son's infeftment was a wadset in the property. It was *duplied*, that the wadset is expressly in implement of the Lieutenant-General's obligation, for securing William in an annualrent of 40000 merks, and the wadset is for the same cause, and to the same effect, bearing a proper wadset with a back-tack.

THE LORDS found, that the general consent to the contract of marriage, containing an obligation by Lieutenant-General Baillie, to infeft William Baillie in an annualrent effiering to 40000 merks out of the lands, was sufficient to oblige James his son consenter, getting right to all his father's lands, to fulfil that obligation; and that the wadset being granted expressly in implement of that obligation, albeit general, and not in the special terms of an annualrent, could not be reduced upon the prior inhibition against the said James.

*Fol. Dic. v. 1. p. 474. Stair, v. 2. p. 881.*

1681, December 1. PITTARROW against ARBUTHNOT.

THE debtor in a personal bond anterior to another creditor's inhibition, having corroborated the same by a new bond after the inhibition, accumulating bygone annualrents, and containing a precept of sasine, on which infeftment was taken; the LORDS reduced the infeftment *ex capite inhibitionis*, in respect the creditor was under no prior obligation to infeftment, but only to pay; but sustained the corroboration for a personal security as to the accumulation.

*Fol. Dic. v. 1. p. 474. HARCARSE (INHIBITION.) No 628. p. 173.*