No 143.
found reduction on the act 1621.

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 regiſtrate 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. *See* LITIGIOUS.

Fol. Dic. v. 1. p. 78. Harcarse, (INHIBITION.) *No 639. p. 176.*

*** Fountainhall remarks the ſame caſe:

ALEXANDER GARTSHORE of that ilk, and ——— Crawford his daughter-in-law, purſue reduction of a diſpoſition made by Sir Walter Seaton to Sir James Cockburn *ex capite inhibitionis.—Alleged*, The diſpoſition is prior to the publication at the market-croſs.—*Answered*, It was enough if it is poſterior to the executing it againſt the party.——This being reported by Harcarſe, the LORDS find the purſuer was *in cursu diligentiæ* by raiſing and executing his inhibition againſt the debtor, albeit before the excution thereof againſt the leiges at the maket-croſs, he was prevented by the defender's diſpoſition; and therefore they reduced the ſame as fraudulent, and intervening after the inhibition is begun, of purpoſe to evacuate it.

Fountainhall, v. 1. p. 408.

1687. *November* 25.

MR HUGH DALRYMPLE Advocate, *againſt* JANET LYELL.

No 144.
An inhibition, if duly executed, found ſufficient diligence to prevent preferences, even out of moveables.

THE ſuſpenſion of a charge in the year 1649, at the inſtance of one Lyell, againſt Sir William Dick, not being diſcuſſed by reaſon of the war, and interruption of juſtice, till the year 1662, and then the charger having proceeded, without denouncing, to appriſe in the year 1653, and to raiſe inhibition which was executed and regiſtrated in the 1654; Sir William aſſigned a moveable bond to one Mowat; of the which aſſignation Lyell raiſed reduction, as being a gratification after his diligence.

Alleged for the defender: That the charge on which denunciation and regiſtration did not follow, was not a ſufficient diligence to hinder the aſſignation; and the inhibition cannot be regarded, ſeeing it affects not moveables; and beſides, it is null; for that the execution bears not, that a copy was left at the croſs. 2*do*, It is not ſufficient that diligence was inchoate, ſeeing the creditor was *in mora* to conſummate the ſame.

Answered: When a perſon raiſes horning, in order to appriſe for his debt, he needs not proceed to denunciation, which is deſigned to make the debtor's eſcheat;

No 144.

and appriſing followed in this caſe, as ſoon as the trouble of the times would allow. 2*do*, Where a debtor is bankrupt, any diligence is ſufficient to hinder him to make a voluntary preference among his creditors; and there was no negligence in the purſuer to proſecute his diligence, by reaſon of the war and ſurceaſe of juſtice.

THE LORDS ſuſtained the appriſing as a ſufficient prior diligence; found a formal inhibition a due diligence to hinder gratification out of moveables: But found, That this inhibition being null for not being duly execute, was not ſufficient to afford the benefit of the act of Parliament. *See* INHIBITION.

Fol. Dic. v. 1. *p.* 77. *Harcarſe*, (ALIENATION.) *No* 151. *p.* 32.

1688. *February* 3. LAURENCE GELLATY *againſt* STEWART.

No 145.
A perſon arreſted the goods of a bankrupt, who voluntarily gave an order to receive them, ſo that there was no decree of furthcoming. A reduction at the inſtance of a creditor who had previouſly charged with horning and denounced, is diſmiſſed: A circumſtantial caſe.

ONE Stewart having arreſted ſome goods belonging to Bennet his debtor, a bankrupt, after the ſaid bankrupt had been charged, and denounced by Laurence Gellaty, and having raiſed a ſummons of furthcoming, he received the goods by virtue of a warrant, by way of diſpoſition from the common debtor; Gellaty raiſed reduction of the ſaid diſpoſition on the act 1621, as being a gratification in prejudice of his more timely diligence.

Anſwered: The arreſter being ſtopped in his furthcoming, which was a habile diligence, by the debtor's voluntary delivery, that muſt be conſidered equivalent to a decreet of furthcoming, otherwiſe no man could ſafely ſtop his diligence upon receiving payment, or delivery of goods.

Replied: By the act of Parliament, the defenders who uſed poſterior diligence muſt refund the payment by partial favour, to the purſuer who uſed the firſt diligence.

Duplied: That part of the act is to be underſtood of poſterior inhabile diligence, whereas the defender uſed the moſt proper diligence by arreſtment; and had he proceeded to obtain a decreet of furthcoming, he would have been preferred to the purſuer upon the head of diligence; and the voluntary delivery, which prevented the decreet, is equivalent thereto.

THE LORDS, in this circumſtantiate caſe, aſſoilzied from the reduction, and preferred the arreſter. But if the charger had proceeded to poind the goods, which would have been alſo habile diligence, and was ſtopped by the diſpoſition and delivery ſooner than the other's decreet of furthcoming could have been recovered, the Lords would have conſidered it. This deciſion ſeems irregular, horning being as proper and habile a diligence as arreſtment.

Harcarſe, (ALIENATION.) *No* 153. *p.* 33.