

1688. June 28.

GARDINER *against* LAIRD of LAG.

## No 166.

A party disposed to an interposed person, who gave a backbond. The interposed person found interpellated from giving preferences, by an inhibition, not against himself, but against his author.

ONE Kirkpatrick having disposed his lands irredeemably to Lag, who obliged himself, by a backbond, to denude upon payment of sums advanced and to be advanced by him, and of debts he should acquire; a creditor of the disposer inhibited him, and comprised the backbond; Lag, in a pursuit for mails and duties, craving to be preferred for some debts he had acquired, it was *alleged* for the other, That the acquisition was a gratification, being posterior to his inhibition.

*Alleged* for Lag:—That he being empowered by the backbond to acquire debt, was not concerned in the inhibition, it not being execute against him, or intimated to him before the acquisition; nor yet being duly registrate, but was registrate by a clerk that was deprived.

*Answered*: An execution of the inhibition against the debtor was sufficient to hinder gratification by him, or by any interposed person; and in so far as the backbond was for the debtor's behoof, Lag was a confident interposed person; and if it were otherwise, the act might be eluded by backbonds requiring no registration. *2do*, Gratification may sometimes be hindered by diligence that cannot formally affect the subject; and it may be debated, if the registration of inhibition *quoad* the point of gratification, be more necessary than the registration of horning; but here Lag was put *in mala fide*, to prefer, by registration of the inhibition; and *esto* the clerk was deprived, yet he was habite and repute clerk, and had the books in his custody.

*Replied*: The inconveniency of backbonds might indeed be considerable in personal or redeemable rights; but Lag's right was irredeemable, as it stood in the register. *2do*, Not only was the clerk deposed, but another did actually exercise the office for some years before the registration.

THE LORDS sustained the inhibition relevant to hinder gratification made by Lag, after the inhibition execute against Kirkpatrick.

*Fol. Dic. v. 1. p. 80. Harcarse, (ALIENATION.) No 154. p. 34.*