

1696. January 29. WILSON and LOGAN against PENMAN.

No 103.

An inhibition was found to affect not only a bond of corroboration, of a debt prior to the inhibition, but an adjudication following thereon; which was not restricted to the amount of the original debt, but reduced *in toto*.

MERSINGTON reported the competition between William Wilson and Logan against Penman, Trumbull of Curie's relict, and other Creditors of Hagbine. It was *objected* against one of their adjudications, that it was allenarly led and deduced on a bond of corroboration, which bond being posterior to my inhibition, it was reducible by the same. *Answered*, In so far as any benefit or advantage accresced to the creditor by the bond of corroboration, such as the accumulating bygone annualrents, and turning them into a principal sum, or the like, he acknowledged all these were struck off by the inhibition; but in so far as the sum precisely coincided and agreed with the bonds corroborated, the diligence by adjudication ought to subsist and stand good. *Replied*, If the adjudication had been led upon both, then it would have been good, but seeing it mentioned nothing but the last bond of corroboration, *sublato fundamento corruiit accessorium*. *Duplied*, The bond of corroboration narrates the first bond, which is sufficient to sustain the adjudication. THE LORDS, by plurality, found the inhibition did not only cut off the bond of corroboration, but also the adjudication led thereon, and found it null *in toto*. Sundry of the LORDS were for restricting the diligence to subsist *quoad* the sums contained in the first bonds corroborated, as both were equitable and favourable; though *in rigore juris* the other opinion may hold.

*Fol. Dic. v. 1. p. 474. Fountainhall, v. 1. p. 706.*

1700. July 3. OSBURN against DUNBAR.

No 104.

A minor, in a disposition, bound himself to renew it, when major. The new disposition, which did not refer particularly to the first, was challenged *ex capite inhibitionis*. It was supported.

HALCRAIG reported the reduction *ex capite inhibitionis*, pursued by John Osburn writer in Edinburgh, against Alexander Dunbar taylor in the Canongate. Dunbar of Thurston disposes some tenements to the said Alexander Dunbar, and obliges himself to reiterate and renew the same; and at this time he wants some months of his majority. Being major, he gives a bond for L. 763 to John Osburn, who thereupon serves an inhibition; after which, he grants to Alexander Dunbar a new disposition of the same tenements, and some others, for security of his former debt, but without any special relation to the prior disposition, or the obligation therein contained to renew it, but only on this narrative, that it was just that Alexander should be fully secured for his money; and on this second disposition he is infest. Osburn craves the second disposition may be reduced, as posterior to his inhibition. *Answered*, Though it be not expressly relative and for implement of the first, yet it had sufficient relation by the presumption and construction of law; seeing Thurston was specifically obliged to reiterate and renew the same; which he has effectually done, by

granting this second right ; which mentioning no other cause, and bearing it to be reasonable that Alexander should be secured, can be ascribed to no other thing but to fulfil the prior obligation ; and so is no voluntary deed, but must be drawn back to the date of the first, and supported by it ; even as dispositions on death-bed, or by husbands in favours of their wives, or by bankrupts to their creditors, are not reducible, if there was a previous special obligation for granting them, though the last do not specifically relate thereto ; but the Lords have always allowed them to be supported and adminiculated by their antecedent onerous cause ; 23d November 1664, Haliburton *contra* Porteous, No 348. p. 6136. ; 27th June 1677, Short *contra* Murrays, No 341. p. 6124. THE LORDS repelled the reason of reduction upon the inhibition, and found the second depended on the first, and was in implement thereof, as to the tenement contained in the first, but no further, seeing *quoad excessum*, it was a new voluntary right, without an antecedent cause. As to the second reason, that the first was done in minority, they ordained it to be farther heard, whether a co-creditor can propone upon and claim the benefit of his debtor's minority ; in which case the first disposition being found null, the second had nothing to support it, and so becomes an adjective without a subjunctive. I find the Lords, on the 4th December 1677, in the case of Oliphant and Hamilton of Wishaw, *voce* MINOR, found a co-creditor might found on the debtor's minority to stop the legal of an apprising from running against him.

No 104.

*Fol. Dic. v. 1. p. 475. Fountainhall, v. 2. p. 100.*

1708. February 14. & 1709. July 1.

STRACHAN *against* TOWN OF ABERDEEN.

No 105.

AN inhibition was found to strike against an heritable bond granted after it, but in corroboration of a personal debt prior to it.

*Fol. Dic. v. 1. p. 474. Forbes. Fountainhall.*

\* \* \* This case is No 60. p. 2609. and No 30. p. 2570. *voce* COMPENSATION. The like was decided February 1730, Campbell *against* Drummond. See APPENDIX.

1713. January 16.

JAMES GORDON of Seaton *against* JEAN GORDON Lady Linturk, and Others.

No 106.

IN Alexander Irving's contract of marriage with Jean Gordon, he as principal, and the Lairds of Kincussie and Lairny as cautioners, having obliged themselves conjunctly and severally to infest Jean Gordon in liferent in all and hail the lands of Linturk ; Mr Alexander Irving, who made up a title to these lands

A person having, after he was inhibited, disposed certain lands to others in implement of an