

hibition must impede any disposition of property; the obligation in the bond being to infest in annualrent.

No 33.

THE LORDS repelled the second allegiance in respect of the answer thereto; and, before answer to the first allegiance, ordained trial to be taken if my Lord Cardross was in Scotland the time of executing the inhibition, and if his being within the kingdom was publicly known; and, before answer to the third, ordained the bonds and infestments to be produced.

Harcarse, (INHIBITION.) No 640. p. 176.

1688. *June.* WATSON of Saughton *against* SIR ROBERT BAIRD.

No 34.

FOUND that inhibitions relative to lands in the barony of Brughton, should be executed at the cross of the Canongate, as the burgh of regality; and therefore found an inhibition as to the foresaid lands executed at the cross of Edinburgh, null and void.

Harcarse, (INHIBITION.) No 642. p. 177.

. Fountainhall reports this case :

1695. *February 26.*—THE LORDS having considered the bill and answers, between James Watson of Saughton and Sir Robert Baird of Saughtonhall; they reduced the said James's inhibition, because not executed at the market-cross of the Canongate; in regard they found it proved, that the lands of Dalry-mills lay in that regality. It was *argued* by some of the Lords, that it was evident the Abbot had dismembered them from his regality, and that they had always answered by suit and presence in the shire, being called in the suit rolls; and did serve heir in the sheriff-court, and not in the regality. But it was *replied*, That in heritable bailiaries, the Abbot could not disjoin; and in services, any of these jurisdictions were competent and cumulative. Saughton judging himself grieved by this interlocutor, gave in an appeal and protestation for remeid of law to the Parliament.

Fountainhall, v. 1. p. 673.

1697. *December 9.* MILL *against* NICOLSON'S CREDITORS.

No 35.

MERSINGTON reported the competition between Alexander Mill of Carriden, and the other co-creditors upon Sir William Nicolson's estate of Cockburnspath. Carriden had both adjudged and inhibited; but his adjudication was found null, because he had charged Sir William's son only to enter heir to his father, who was never infest in the barony of Cockburn's-path; whereas he should have charged him to have entered heir to his uncle Sir John, who

Effect, in a ranking of adjudications, of an inhibition found ineffectual as to certain lands, but good as to others.

No 35.

died last vest and seized therein. Then he insisted on his inhibition, and it was found null, in so far as it extended to the barony of Leswade, because not executed at the head burgh of the regality, within which these lands lie; but sustained his inhibition *quoad* Cockburn's-path, as being legally executed there. So that he reduced the grounds of several adjudgers' debts as contracted posterior thereto; which adjudgers being within year and day of the first, came in *pari passu* therewith: And now they being cut off, the question arose, to whom their shares of the dividend, either of the rents of the lands, or the price devolved? Carridden *alleged*, They being laid aside by his diligence, the same opened to him, seeing he could now lead a new adjudication, and thereby have right to their share which was become *nullius et in hæreditate jacente*. The prior adjudgers, whose debts were contracted before his inhibition, contended these shares accresced to them, seeing their debts more than absorbed the value of the lands; and *esto* these posterior creditors had never adjudged, Carridden as inhibitor could have laid no claim to these lands by virtue of his diligence, and so it comes to the case as if these debts had never been contracted, and so the inhibitor can have no benefit thereby; an inhibition being only a prohibitory diligence, and giving no positive right: And though he adjudge now, yet that will not bring him within year and day of these prior adjudgers, and so would signify nothing; and the contracting of the posterior debts did not wrong or prejudge the inhibitor, because the debts anterior to him are far above the value of the land, so he would have got nothing however; and the natural effects of inhibitions are to reduce all posterior deeds, which, by their concurrence within year and day, restricting the share of the first adjudgers, and they being removed by the inhibition, the fetters of the first adjudgers restriction fall off, and so they return to their full and first extent, as if these posterior debts had never been contracted.—THE LORDS found their share accresced to the anterior adjudgers, and could not belong to the inhibitor, unless there were a superplus more than paid the first adjudgers whose debts were contracted before the inhibition. Several of the Lords were unclear in this nice point; but it will be the interest of these posterior adjudgers to agree with Carridden, the inhibitor, that he may withdraw his reduction of their rights, by which they may still affect a proportion of the price.

Some urged, seeing the inhibitor could not draw their shares, and that these posterior adjudgers had it by concurrence and communication with the first adjudgers, therefore, that the inhibition should not reach them, as being a part of the first adjudication, and the inhibitor not being bettered by reducing them. But if they intromit, may not the inhibitor pursue them for repetition, or will they be construed, that *bona fide suum receperunt, so conditione non tenentur*? Or will this inhibition interrupt their *bona fides*? It may be doubted, if *jus accrescendi* takes place in our law, *inter re et verbis conjunctos*, as by our

statute posterior adjudgers, if within year and day, are conjoined, and make a part of the first effectual adjudication.

No 35.

Fountainhall, v. 1. p. 800.

1702. *January 15.*

M'CARTNEY of Blaiket *against* IRVING of Drumcoltran.

JOHN MAXWELL, heritor of the lands of Cocklike, disposes the same to Jean Guthrie, in *anno* 1636, from whom Blaiket has right by progress, and pursues mails and duties.

Compearance is made for Drumcoltran, who *alleges*, He has a preferable right, in so far as the said John Maxwell stood inhibited, at the instance of James Maxwell his brother, for 4000 merks, before the said disposition to Guthrie; and having granted a bond of corroboration of the ground of inhibition, restricting the same to 2000 merks, there was an apprising led upon that corroboration, which was conveyed to Drumcoltran, and he thereupon in possession.

It was *answered*, No regard to the apprising, posterior to his (Guthrie's) right; because it proceeded upon a voluntary bond of corroboration, and so could not be drawn back to the date of the inhibition.

“THE LORDS found, That Drumcoltran, as appriser, upon the bond of corroboration could not quarrel deeds as posterior to inhibition used upon the debt corroborated.”

It was farther *alleged*, That Drumcoltran had also right to the debt corroborated, and to the inhibition, and repeated his reduction *ex capite inhibitionis*.

It was *answered*, A reduction *ex capite inhibitionis* is not competent in a competition for mails and duties, unless the inhibitor had also apprised or adjudged the mails and duties; because inhibition is merely a prohibitory diligence, annulling posterior voluntary deeds in prejudice of the inhibitor; so that, unless the inhibitor could affect the mails and duties by his diligence, he cannot pretend he is any way prejudged by the deeds in favours of the pursuer, in respect that, if Maxwell, the common author, were pursuing, he could not be excluded upon the bond and inhibition; and the pursuer is found preferable to the apprising and corroboration.

It was *replied*, That reductions are daily sustained upon inhibitions, without adjudging, and particularly in rankings in order to sale, which have their rises from suspensions, or actions of multiple-poining at tenants instance, from whence arises a competition, for mails and duties; and, for the same reason, Drumcoltran should be admitted to repeat his reduction in this competition.

No 36.

An inhibitor cannot compete for mails and duties, unless he has also adjudged.