

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

No 106.
anterior bond
of relief, the
disposition
was sustained.

after the husband's death, granted to Kincussie and Lairny a bond of relief of their cautionry in the year 1682; and in the year 1686, was inhibited by James Gordon his creditor for 1000 merks *per* bond, who adjudged the lands in the year 1691. Mr Alexander Irving did, in implement of this bond of relief, in the year 1687, dispone the same lands in favours of the cautioners; who being infest, that same year granted a disposition to Jean Gordon in the terms of her contract of marriage; whereupon there arose a competition for ~~mails and duties~~ betwixt her and her authors, and James Gordon, who claimed preference, in respect that his inhibition was anterior to the disposition made to them, though his adjudication was posterior.

THE LORDS found, That the infestment granted to Kincussie and Lairny is sufficiently supported by Mr Alexander Irving's bond of relief, and therefore preferred them.

Albeit it was *alleged* for James Gordon, That the antecedent personal bond of relief, which imported only an obligation to free and relieve them of any damage they might sustain through their cautionry, if distressed by paying up the jointure, could never support the infestment after his inhibition, unless the bond of relief had borne an obligation to infest, either generally or specially. In respect it was *answered*, That any anterior obligation, whether special or general, is sufficient to secure against the effect of an inhibition, 10th February 1672, Rig *contra* Beg, No 97. p. 7030.; 22d July 1675, Gordon *contra* Seaton and others, No 100. p. 7034. Besides, here the obligation to relieve was a tacit obligation to infest; seeing the cautioners were precisely bound to infest Jean Gordon, and could not be relieved of that engagement without infesting her.

Fal. Dic. v. 1. p. 475. Farber, p. 646.

SECT. V.

If Inhibition strikes against Renunciations, Recognitions, or Conditional Alienations.

No 107.

1622. February 26.

BURTS *against* GRANTULLIE.

ANDREW BURT's action for pointing the ground of Grantullie for an annual-rent which he had comprised, was sustained, albeit Grantullie *alleged*, That Merschell, who was infest under reversion, had renounced the annual-rent; because Burt had served inhibition against Merschell's author before the renunciation, and thereafter reduced his infestment; because he that renounced was not