

least altogether causeless, as his circumstances were unquestionably good, and above all suspicion; and that it would not be alleged, that there was any truth in, or foundation for the facts set furth from the usual stile in the bill of inhibition.

No 51.

THE LORDS 'refused to recal the inhibition,' being of opinion, that let a man's circumstances be what they will, an inhibition against him could not be stopped when used for a liquid debt. The more solvent the debtor is, the less excusable is the deferring payment; for procuring which, inhibition, imprisonment, and other legal compufitors have been contrived.

Fol. Dic. v. 3. p. 324. Kilkerran, (INHIBITION.) No 9. p. 288.

1750. January 16. *SELLERS against CLEUGHTON.*

No 52.

It was here found, that an inhibition did not only secure the principal sum and interest in the bond, which was the ground of it, but that it also extended so as to carry by the subsequent adjudication and accumulations, the irredeemable right to the lands by an expired legal, in prejudice of an intervening absolute right of property, granted by the person inhibited, between the date of the inhibition and the adjudication.

Fol. Dic. v. 3. p. 322. Kilkerran, (INHIBITION.) No 11. p. 290.

* * D. Falconer reports this case :

AGNES, sister of Robert Davidson, used an inhibition against him, subsequent to which he conveyed his heritage for onerous causes, of which she obtained reduction, and adjudged upon her ground of debt; and then disponded her debt and diligence, which came by progress into the person of William Sellers writer in Edinburgh.

The disponee from Robert Davidson raised a reduction, reductive of Agnes's decret; and the matter resolved into a competition for the mails and duties, betwixt William Sellers and George Cleughton, undertaker of coaleries at Newcastle, purchaser by progress from Robert Davidson's disponee.

The question now to be observed was, how far the subject adjudged, being conveyed before the adjudication, though subsequent to the inhibition, was affected thereby? Whether to the utmost extent an adjudication could be pleaded, or only as a security for the bond, without accumulations? Whereupon the Lord Ordinary, 22d November 1749, 'Found, that the inhibition secured the debt, and hail legal consequences thereof.'

Pleaded in a reclaiming bill, The stile of an inhibition is only securing the principal sum, annualrents, and penalty, contained in the bond; while the creditor's security for these is not impaired, the debtor may lawfully alienate his

No 52.

whole estate; and though it is the practice to sustain reductions on inhibitions, yet these are carried no further than to salve the creditor's right, as it is guarded by the inhibition; now the estate, being as to the surplus effectually disposed, cannot be thereafter adjudged for the disponent's debt; and so was found, Falconer 1683, Trotter against Lunden, Sect. 6. *b. t.*

THE LORDS adhered.

Pet. A. Macdowal.

D. Falconer, v. 2. No 122. p. 138.

1750. February 2.

THOMAS SMEALL and other CREDITORS, *against* ROBERT CLARK and Others, also Creditors of SIR ALEXANDER HOPE of Kerse.

No 53.

Found in conformity with Lithgow against Creditors of Whitehaugh, No 48. p. 6974.

SUNDRY adjudications at the instance of these creditors, having been led against Sir Alexander Hope of Kerse, which were not ranked *pari passu* with each other, and being all subject to inhibition at the instance of other creditors, a question occurred, Whether the deficiency occasioned by the draught of the inhibitors, ought to be proportionally borne by all the debts struck at, or by the creditors ranked in the last place, after the example of the decision 23d January 1747, in the case of Whitehaugh, No 48. p. 6974. where the deficiency was found to fall on the last ranked annualrenter?

Pleaded for the postponed creditors, The decision of Whitehaugh does not apply to this case, having proceeded on the principle, that the stipulator of an annualrent contracted on the faith of the records, and could not be prejudged by another's contracting posterior to him: But here it fell only to be considered, that they had all contracted in contempt of the inhibition; and behoved proportionally to bear the penalty.

Pleaded for the preferred creditors, The decision is not founded on the security of the records; for these give no security where there are inhibitions; but upon this point, that there is only a prohibition to contract to the prejudice of the inhibiting creditor; and so long as he is not hurt, the contraction is no contempt. The adjudgers are ranked in their order; and if any calamity should diminish the subject, which else would have paid them, this does not vary the ranking; and the inhibitor's draught is such a calamity.

It was suggested by the accountant, That the deficiency ought to be laid proportionally on all the adjudgers, unless the adjudication of one had been recorded, before contracting of the other's debt; in which case it ought to be laid on the last.

THE LORDS found, That the inhibition affected the debts contracted after executing it, by the deficiency's being laid first on the debt ranked in the last