

that this cannot be the rule ; but they are personal rights, and that is the reason they are not subject to it.

No 55.

Replied, Here the bygones were separate from the right, which was conveyed by the Cockburns, and they retrocessed to them. There is a difference betwixt annualrents on an heritable bond, and those which are said to arise on a sum adjudged for, where properly there are none; but the estate is disposed redeemable for the debt and annualrents; and he who succeeds to the land must, if it is redeemed, get the whole redemption money; but the annualrent right is a *feudum*, of which the bygones, as they grew, were the profits; and therefore are more fitly compared to the rents of land. Adjudications upon cognition have been found out from necessity, because there was no other way to affect the rents of a defunct's estate, to whom no body would be heir; and this is done by adjudging the lands as they were at the death. The reason that bonds on which no infeftment has followed, are not affectable by inhibition, is not that they are not real; but that they are simply obligations, which are not comprehended under the stile, and would not have been affected, even when moveable goods and gear were affected thereby.

Besides what is above argued for the assignee, it was observed by one of the Lords, That, in his opinion, the going to heir or executor was not indeed the mark; for that a bond secured by adjudication, being charged for, if the creditor died in the course of his diligence, would go to the executor, and yet would be affected by inhibition; as also would a debt charged by the debtor on an estate disposed by him with that burden. But the distinction was, whether the right was real or personal, of which there were some that yet had a real action annexed to them; as particularly the right of bygone annualrents on an heritable bond, which were personal, though the right of annualrent itself was real.

THE LORDS found; That the alienation of the rents in question fell not under the inhibition; and therefore preferred the assignee. See No 58. p. 6993.

Reporter, *Drummore.* Act. *W. Grant & Lockhart.* Alt. *R. Craigie & R. Dundas.*
Clerk, *Kirkpatrick.*

D. Falconer, v. 2. No 138. p. 161.

1750. November 1.

BLACKWOOD of Pitreavie; *against* The REPRESENTATIVES of ROBERT ALLAN.

ROBERT ALLAN being creditor to Sir George Hamilton of Tulliallan, and Sir Robert Miln, by their joint bond, and to Sir George Hamilton by his bond, raised inhibition against them, narrating the said debts, but the will of the letters conceived in these terms, ' That ye inhibit and discharge the said Sir George Hamilton and Sir Robert Miln, that they noways sell, &c. their lands, &c. nor yet give bond for payment of sums of money, whereby the same

No 56.

An inhibition on two bonds against different debtors, which discharged them to put away their land in pre-

No 56.
 judice of the
 said bond,
 sustained.
 The execu-
 tion had the
 same words,
 but in the
 register it
 was written
 ' the said
 ' bonds.'

' may be appraised, adjudged, or evicted from him, or he denuded thereof, by
 ' any manner of way, in defraud and prejudice of the said complainer, anent
 ' the implement and fulfilling to him of the foresaid bond ;' and inhibiting the
 lieges to contract in defraud and prejudice of the complainer, as said is. The
 personal execution bore, ' anent the implement of the bond within mentioned,'
 and that against the lieges, ' as said is.' In the register it was written bonds ;
 and the letters themselves bore, ' because the Lords have seen the said bonds.'

Mr Robert Blackwood of Pitreavie, a posterior creditor, insisted in a competi-
 tion to reduce this inhibition, as only prohibiting contractions, whereby one bond
 might be prejudiced, and not applicable to the one more than the other; so that
 neither was secured.

THE LORD ORDINARY sustained the objection ; but on a representation, show-
 ing that this question had been decided, and the same inhibition sustained, when
 objected to by another creditor, Maclellan against Allan, No 61. p. 4967. he,
 27th June 1750, ' in respect of the former judgment upon the same objection
 to the inhibition in question, repelled the objection.'

Pleaded in a reclaiming bill, The former judgment, though regarding the
 the same inhibition, yet, not being betwixt the same parties, is not *res judicata*,
 but only a decision ; and it is plain the debtor is only prohibited to contract to
 the prejudice of one bond.

Answered, Though there is no *res judicata*, yet it would be preposterous dif-
 ferent judgments should be given concerning the effect of the same diligence,
 on the same subject ; the defect is only the omission of a letter ; both bonds are
 narrated ; and the will refers to the said *bond*, because the Lords have seen the
 said *bonds*. It is the register gives warning to posterior contractors, and that
 bears *bonds* ; and since the judgment, there may have been transactions con-
 cerning this inhibition on the faith thereof.

For Mr Blackwood, it is of no import that he wrote bonds in the register, for
 the diligence is what makes the prohibition ; and the record disagreeing there-
 with is false. The *because* is no part of the bill, but the ground of debt, being
 seen, is the warrant of the deliverence upon it.

Observed, There was more than a letter wanting ; for Sir Robert Miln was
 only bound in one bond, and could not be inhibited on both. And the will
 ought to have been to inhibit them both on the one bond, and Sir George on
 the other distinctly.

N. B. The former judgment had great influence on the decision.

THE LORDS adhered.

Act. T. Hay.

Alt. W. Grant.

Fol. Dic. v. 3. p. 321. D. Falconer, v. 2. No 158. p. 182.