

1774. July 2.

DR ANDREW HERON of Bargaly, against PATRICK HERON of Heron.

AFTER much litigation between these parties respecting the estate of Bargaly, the Court ultimately fixed certain rules, according to which Patrick Heron was to account for the possession of the estate, which was held for some years by him and his predecessors; and a remit was made to an accomptant to examine and report a state of the accompts, who had accordingly stated the accompts in different views, by all of which he established balances, as due to the Doctor, at Whitsunday 1773, by Patrick Heron, who surrendered to him the possession of the estate at the said term.

Patrick Heron having taken an appeal to the House of Lords, and served the same, the Doctor entered a cross appeal, and he afterwards executed an inhibition against Mr Heron, to the full extent of the sum concluded for by his libel, and recorded the same in the general register.

Upon an application to the Court, on the part of Mr Heron, to recal this inhibition, the Court, by their first interlocutor, found, That, after an appeal taken in the cause by both parties, *hinc inde*, and served, there was no dependence in this Court, upon which inhibition could proceed; therefore recalled the inhibition complained of, &c. But, upon reviewing the case, the Court were of opinion, that this was still a depending process, and that the inhibition ought to stand good; and, therefore, gave the following judgment:

“ Repel the objection to the inhibition, and find it valid and subsisting.”

Act. Dean of Faculty.

Alt. Murray, Crosbie.

Clerk, Tail.

Fol. Dic. v. 3, p. 321. Fac. Col. No 119. p. 320.

1779. December 9.

GRANT against MANSFIELD and RAMSAY.

GASCOIGNE entered into a minute of sale for the purchase of Dalderse from Sir James Campbell at L. 27,000, of which L. 15,000 was to be secured on the lands, L. 3000 paid immediately, and a bond to be granted by the purchaser and two cautioners for the remaining L. 9000. Soon after the execution of this minute, Gascoigne and his cautioners became insolvent, and Sir James now insisted, that in addition to the collateral securities formerly stipulated, the whole price should become a burden on the lands; which was accordingly done by Sir James granting disposition to the lands on that condition, and by Gascoigne's granting heritable bonds for the price in the proportions above-mentioned, on which infestment followed. In a judicial sale of the estate, brought by Gascoigne's Creditors, it was *pleaded* for one of them who had used inhibition after the minute of sale between Gascoigne and Sir James, but before the granting

No 63.

After appeal taken from judgments of this Court, and served *hinc inde*, it is competent to the pursuer to use an inhibition against the defender, as on a dependence.

No 64.

No 64.

of Sir James's disposition, that the transaction by which the whole price was made a burden on the lands, and also the heritable bond for L. 9000, being a deed entirely voluntary on the part of the debtor, must be affected by the inhibition. THE LORDS, on this ground, that an inhibition cannot affect deeds without which the granter could not have acquired the subject of competition, repelled the plea of the inhibiting creditors.

Fol. Dic. v. 3. p. 323. Fac. Col.

* * This case is No 3. p. 1384. *voce* BENEFICIUM CEDENDARUM ACTIONUM.

1780. February 29. DR ALEXANDER GORDON *against* ALEXANDER MILNE.

No 65.

The Court was of opinion, that inhibition is no bar against granting tacks.

ISABEL GORDON, heiress-apparent to her brother in the estate of Edintore, disposed these lands to Dr Gordon, under the reservation of her own liferent.

Soon afterwards, Dr Gordon used inhibition, in order to prevent her from doing any deed to the prejudice of his right thus acquired.

In fact, however, posterior to the inhibition, she let to Milne a lease of the lands for the term of nineteen years; before the expiration of the half of which she died.

Of this tack, Dr Gordon, having at length led an adjudication in implement of the aforesaid conveyance, and been infeft, brought an action of reduction; and he likewise insisted in a process of removing from the lands.

Pleaded for the defender; When the lease in question was granted, the disposition in favour of the pursuer was merely a latent deed, no infeftment till long after having been taken by him; while, on the other hand, Mrs Gordon was publicly known to have succeeded to her brother in the lands; and therefore the defender is entitled to reap the full benefit of a lease thus *bona fide* obtained by him. For tacks, however long their endurance may be, when granted by apparent heirs, like her, 'three years in possession,' with whom the lessees have *bona fide* contracted, are unquestionably valid; 27th June 1760, Knox *contra* Irvine and Forsyth, No 33. p. 5276. It is true the pursuer had executed a prior inhibition; but that diligence extends not to the granting of tacks, being limited in its effect to those deeds which touch the property, not merely the possession of lands; Lord Stair, b. 4. tit. 50. § 2.; Erskine, b. 2. tit. 11. § 2.

Answered; By the disposition in the pursuer's favour, prior to the granting of the lease, the granter's right in the lands was restricted to a naked liferent; the consequence of which was, that the tack could not be effectual beyond the period of her life. The pursuer, it is true, was not then infeft; and his right, like that of his author, remained personal; but he had already used inhibition, which was sufficient to protect it from any encroachment. For as the granting of the tack in question to subsist after the death of the liferentrix, was an ex-