

No 93.

his lands to the defender for his relief, conform to the bond of relief anterior to the said inhibition; and the disposition must be drawn back to the time of the relief; and so nothing done in prejudice of the inhibition. Likeas he *alleged* further, that the creditors to whom he became cautioner for John, did serve inhibition against John, to which inhibition he was made assignee by them at the paying of the sums for John. THE LORDS repelled this allegiance, reserving to the defender his action of reduction, as accords of the law, upon his prior inhibition, whereunto he was made assignee; but would not receive it by way of exception, to take away the pursuer's infestment, nor to defend his own against the pursuer's ground of reduction.

*Spottiswood, (INHIBITION.) p. 177.*

1631. March 8.

BROWN against MURRAY.

No 94.  
Found also  
in conformity  
with  
Oliphant a-  
gainst Keith,  
No 91. p.  
7025.

A CONTRACT of alienation of lands, and infestment following thereupon, granted to Murray by his author who was his debtor, being desired to be reduced *ex capite inhibitionis*, executed at Brown the pursuer's instance, who was also creditor to the said defender's author of his right, and which was executed before this contract and infestment desired to be reduced; and the defender *alleging*, that albeit this contract and infestment was after the inhibition, yet seeing there was a preceding true cause of a lawful debt, owing by the common debtor to the excipient before this inhibition, for satisfying whereof, his debtor had contracted, and given him this contract and infestment; so that albeit the same be after the inhibition, yet depending upon a preceding cause of just debt, as it was lawful for him to have taken payment of that preceding debt after inhibition, so it was also lawful for him to receive this infestment for satisfaction thereof. This allegiance was repelled, and the preceding debt before the inhibition was not found a cause to maintain this contract and infestment, albeit bearing to be given for satisfying thereof, seeing the said preceding bond of debt bore not that the debtor was obliged to give the creditor infestment of these lands, *quo casu* the infestment so given conform to that anterior bond might have been sustained, albeit subsequent to the inhibition; but the bond bearing no such clause, the infestment and contract could not be sustained, albeit bearing to be done for implement of that bond, and satisfying of the debt thereof.

Act. ———.

Alt. Gibson.

Clerk, Gibson.

*Fol. Dic. v. 1. p. 474. Durie, p. 577.*

\* \* \* This case is reported by Auchinleck.

IN a reduction *ex capite inhibitionis* by John Brown of Inchafray against George Murray of Ardenne and David Murray of Kenkell, for reduction of

a contract, and an infeftment made by the said George to the said David after inhibition was executed against the said George at the instance of the said John Brown, it was *excepted* by the said David, That he ought to be assolizied from the reduction, because the sum contained in the contract and infeftment following thereupon craved to be reduced, was the duty of a tack set by the defender to the said George before the inhibition was raised and executed, and so he might lawfully take a new security therefor, notwithstanding of the inhibition. To which it was *replied*, That the decret (if any was obtained) for the tack duty, was obtained after the inhibition, and being a voluntary deed of the party inhibited, cannot take away the force of the inhibition. THE LORDS repelled the exception in respect of the reply.

No 94.

And this cause being again disputed 23d July 1631, the Lords reduced the said contract in so far as it might be a ground of infeftment for greater sums than were contained in the bonds made by the defender before the inhibition.

*Auchinleck, MS. p. 109.*

1633. March 9. FLEMING *against* HIS CREDITORS.

No 95.

CAPTAIN FLEMING being addebted to sundry creditors, and inhibited at the instance of ——— one of them, after inhibition, he makes disposition of the lands of Katherline for payment of certain others his creditors for sums addebted to them before the inhibition. ———, at whose instance he was inhibited, pursues reduction of the infeftment granted to ——— *ex capite inhibitionis*. It was *alleged* against the reduction, That his infeftment was granted for payment of true debts owing to C. A. before the inhibition which were specially inserted in his disposition, and so ought to be drawn back *ad suam causam*. To which it was *answered*, That although the debts for which the infeftment was granted were anterior to the inhibition, yet seeing by the said bonds, the debtor was not obliged to infeft them in his lands, in which case, the infeftment would have been sustained, but being personal bonds, the debtor could by no voluntary deed make prelation of one creditor to another, who had used greater diligence by serving of inhibition. THE LORDS repelled the exception in respect of the reply.

*Auchinleck, MS. p. 110.*

1639. March 6. L. SCOTSTARBET *against* BOSWELL.

No 96.

A party who was, prior to inhibition, bound to dis-

THE L. of Scotstarbet pursues reduction against William Boswell, for reducing of a contract of alienation of the lands of Pitodrie, made by David