

ercise of the right of property of which she was divested, and thus a wrong or tortious act with respect to her; so, after inhibition, all *bona fides* on the part of the person deriving right from her is necessarily precluded; and the deed, which it was wrong in her to grant, becomes, in the construction of law, an equal wrong in him to receive, and therefore is to be reduced *ex capite inhibitionis*. The defender indeed has supposed, that inhibition is not competent to guard against the granting of tacks to the prejudice of the inhibitor's right, as if that diligence could be of any service in such a case as the present, were the right of property nevertheless to be defeated at pleasure by the granting of leases; which it might be as effectually as by any alienation whatever.

The Court, however, seemed not to consider the inhibition as of any consequence in the case; but appearing to rest their judgment on this ground, that the defender, who had derived his right from a person not infeft, was not entitled to compete with the pursuer holding in his hands a charter and sasine of the lands;

“THE LORDS decerned against the defender in the actions of reduction and of removing.” See PERSONAL and REAL.

Lord Ordinary, *Ellisak.* Act. *W. Stewart.* Alt. *Elphinston.* Clerk. *Mackenzie.*  
S. Fol. Dic. v. 3. p. 323. Fac. Col. No 109. p. 205.

1782. June 19. JOHN WATSON against SARAH MARSHALL and Others.

BARCLAY was a creditor of Henry Alcorn by bond. Jean Crookshank, decerned executrix-dative *qua* nearest of kin to Barclay, sued James Alcorn, as representing Henry his grand-father, for payment of that debt. Crookshank, however, did not expedite a confirmation; but, during the dependence of the action, obtained from James Alcorn a bond of corroboration of the original bond, upon which she obtained decret, and afterwards led an adjudication.

Prior to this bond of corroboration, Sarah Marshall, another creditor, had executed inhibition against Alcorn.

In the ranking of Alcorn's Creditors, Watson, in the right of Jean Crookshank, produced, as his interest, the adjudication obtained by her; to which Sarah Marshall, and the other Creditors of Alcorn,

*Objected; First.* That Crookshank not having obtained confirmation, was never vested in the right of the debt. But

THE LORDS having considered the bond of corroboration as supplying the want of confirmation, and repelled the objection;

Marshall *next objected;* The above mentioned bond of corroboration, the only title upon which the decreets of constitution and of adjudication proceeded in favour of Jean Crookshank, was posterior to the inhibition in question, and therefore is void *quoad* the inhibitor; the granting of that deed being an act

No 65-

No 66.

Inhibition  
effectual a-  
gainst a bond  
of corrobor-  
ation, granted  
to the heir of  
the creditor.

No 66. entirely voluntary, and which could not by any action have been enforced; Stair, b. 4. tit. 20. § 28.; b. 4. tit. 50. § 11.; Bankton, b. 1. tit. 7. § 138.; Erskine, b. 2. tit. 11. § 11.; Fountainhall, 29th January 1696, Wilson and Logan *contra* Penman, No 103. p. 7036.

*Answered*; This inhibition did not strike against the original ground of debt, which still subsisted. Neither did the corroboration create any new debt; its only effect was, to preserve against prescription, or to save the expense of expediting a confirmation.

THE LORDS found the inhibition to strike against the bond of corroboration, as being posterior to it, and serving to create a title to the prejudice of the inhibiting creditor.

They therefore sustained the objection. See SERVICE and CONFIRMATION.

Lord Ordinary, *Alva*.  
Alt. *Currie*.

For the Objectors, *Ilay Campbell, Craig, Mat. Ross*.  
Clerk, *Colquhoun*.

S.

*Fol. Dic. v. 3. p. 323. Fac. Col. No 45. p. 72.*

No 67. 1785. July 24. DOUGLAS, HERON, and Co. *against* BROWN.

INHIBITION does not strike against a new bill granted for an old debt which subsisted prior to the inhibition.

*Fol. Dic. v. 3. p. 323. Fac. Coll.*

\* \* \* See this case, *voce* INNOVATION.

1787. August 8. LORD ANKERVILLE and Others *against* JAMES SAUNDERS and Others.

No 68.

Inhibition not competent to render effectual against creditors a deed by which a person obliges himself, in favour of others, not to sell or impignorate his lands, nor to contract debt by which they may be burdened.

MR ROSS-MONRO of Newmore entered into a contract with Lord Ankerville, and other persons, nominated as his successors in that estate, by a deed of settlement executed by Lieutenant-Colonel Monro, his predecessor, which, however, left him at liberty to sell the estate or burden it with debts.

By this contract, Mr Ross-Monro bound and obliged himself, and his heirs, that he should in no wise alter, innovate, or change the course and order of succession of the said estate, as established by the disposition and destination executed by the deceased Lieutenant-Colonel John Monro, nor do any act or deed, directly or indirectly, that may frustrate the same: And further bound and obliged himself, and his aforesaid, that he should not sell, dispoise, wadset, or impignorate the lands and estate above mentioned, or any part or portion thereof, nor grant infeftment of annualrent or annuity forth of the same, or any other right, redeemable or irredeemable, whatsoever; nor should he