

must be unavailing, as having been used against a person who was at no time proprietor. No diligence can have effect in this case, but that which is directed against the heir whose right is completed by service.

No 38.

Answered; The object of inhibition is, to preclude debtors from disappointing the claims of their creditors, by posterior deeds tending to alienate or burden any real estate, which may fall under the right of the debtors. It has been admitted to be immaterial, whether such estate had been previously, or not till afterwards, acquired. And it is plainly of as little importance, by what particular means it has come under the right of the debtor; whether immediately by his making up titles to it himself, or by the operation of law, in consequence of titles established in the person of a supervening heir. In both cases alike, it is the right of the debtor that is ultimately exercised.

The inhibition in question was calculated to debar all effect of the second deed, in carrying off, to the prejudice of the first, property attachable in the right of the granter; the very thing which is here attempted by the competing party. The inhibitor's claim of preference is therefore to be sustained.

The Lord Ordinary found the inhibition to be ineffectual, and repelled the claim of preference made on that ground.

THE COURT adhered to the interlocutor of the Lord Ordinary.

Lord Ordinary, *Elliock*.

For the Inhibiter, *Elphinston*.

Alc. R. *Craigie*.

Clerk, *Home*.

Fol. Dic. v. 3. p. 260. Fac. Col. No 292. p. 449.

1791. *June 18.* MORGAN *against* VISCOUNT OF ARBUTHNOT.

No 39.

AN apparent heir was found entitled to follow out a decree of removing already pronounced, of which the tenant had presented a bill of suspension. See APPENDIX.

Fol. Dic. v. 3. p. 259.

1792. *December 22.* JAMES BEGBIE *against* SIR CHARLES ERSKINE.

No 40.

JAMES BEGBIE obtained a decree before the Admiralty Court for payment of the balance of an account against the late Sir Charles Erskine, who brought the judgment under review by suspension.

Sir Charles died, and the action was transferred against Sir William his eldest son, who having also died, it was transferred against Sir Charles Erskine, the present defender, who then became heir apparent to the late Sir Charles his father.

An heir apparent who declines entering, is bound to take a day to renounce, although he should be decerned exc-

No 40.
 Executor *qua*
 nearest in kin
 to his ances-
 tor.

In this action, he *contended*, that although he did not propose to represent his father and brother *passive*, he was not bound to produce a renunciation as heir to them, because he was *in cursu* of confirming himself executor to both, in which character alone he would be able to discuss the charger's claim with safety: That as no inventory of his father's succession had been made *intra annum deliberandi*, he could not now enter heir to him *cum beneficio*; a hardship which had been occasioned by no fault of his, as his brother Sir William had survived his father more than a year: That if, in his character of executor, he should establish, that the charger's claim was ill founded, his right to insist either for a decree against him, or for his renouncing, would be at an end; whereas, if he were obliged *in hoc statu* to give in a renunciation, it would be in the charger's power, after getting a decree *cognitionis causa*, to attach by adjudication any heritage belonging to the late Sir Charles, although it should afterwards appear that his claim against him was ill founded.

The LORD ORDINARY found, 'That the circumstances of the defender being decerned executor *qua* nearest in kin to his deceased father and brother, does not afford any ground for exempting him from being subject to the ordinary course of law;' and therefore 'he assigned a day for him to give in a renunciation.'

A reclaiming petition for Sir Charles was refused without answers.

Lord Ordinary, *Dreghorn*.
 Clerk, *Home*.

For the Petitioner, *Dean of Faculty, D. Douglas*.

R. D.

Fol. Dic. v. 3. p. 258. Fac. Col. No 9. p. 19.

1793. July 10.

JAMES and WILLIAM BEVERIDGE *against* ELIZABETH CRAWFORD and THOMAS COUTTS.

No 41.
 An adjudication on the trust-bond of an heir apparent, granted for the purpose of making up a title, in order to reduce a disposition, is competent, although the disponee be infest.

THE late Colonel Crawford conveyed the estate of Crawford-land to Thomas Coutts, by a disposition, of which Mrs Elizabeth Crawford, the heir at law, proposed to bring a reduction *ex capite lecti*. As a preparatory step, she granted a trust-bond to Messrs James and William Beveridge, upon which, after raising letters of general and general special charge against her, and after Mr Coutts had taken infestment on the disposition in his favour, they brought a process of adjudication, wherein Mr Coutts appeared, and

Objected: As the lands are not *in hereditate jacente* of her predecessor, Mrs Crawford cannot be served heir at law to him in them, nor can her creditors lead an adjudication against them. She is indeed possessed of the faculty of bringing a reduction of the disposition and infestment excluding her, and that faculty alone her creditors can adjudge, Erskine, b. 3. tit. 8. § 100.; 1769, Tyson against Simpson. See APPENDIX.