No 52. whole estate; and though it is the practice to sustain reductions on inhibitions, yet these are carried no further than to salve the creditor's right, as it is guarded by the inhibition; now the estate, being as to the surplus effectually disponed, cannot be thereafter adjudged for the disponer's debt; and so was found, Falconer 1683, Trotter against Lunden, Sect. 6. *h. t.*

THE LORDS adhered.

Pet. A. Macdowal.

D. Falconer, v. 2. No 122. p. 138.

1750. *February* 2.

THOMAS SMEALL and other CREDITORS, *against* ROBERT CLARK and Others, also Creditors of SIR ALEXANDER HOPE of Kerse.

No 53.
Found in conformity with Lithgow against Creditors of Whitehaugh, No 48. p. 6974.

SUNDRY adjudications at the instance of these creditors, having been led against Sir Alexander Hope of Kerse, which were not ranked *pari passu* with each other, and being all subject to inhibition at the instance of other creditors, a question occurred, Whether the deficiency occasioned by the draught of the inhibiters, ought to be proportionally borne by all the debts struck at, or by the creditors ranked in the last place, after the example of the decision 23d January 1747, in the case of Whitehaugh, No 48. p. 6974. where the deficiency was found to fall on the last ranked annualrenter?

Pleaded for the postponed creditors, The decision of Whitehaugh does not apply to this case, having proceeded on the principle, that the stipulator of an annualrent contracted on the faith of the records, and could not be prejudged by another's contracting posterior to him: But here it fell only to be considered, that they had all contracted in contempt of the inhibition; and behoved proportionally to bear the penalty.

Pleaded for the preferred creditors, The decision is not founded on the security of the records; for these give no security where there are inhibitions; but upon this point, that there is only a prohibition to contract to the prejudice of the inhibiting creditor; and so long as he is not hurt, the contraction is no contempt. The adjudgers are ranked in their order; and if any calamity should diminish the subject, which else would have paid them, this does not vary the ranking; and the inhibiter's draught is such a calamity.

It was suggested by the accountant, That the deficiency ought to be laid proportionally on all the adjudgers, unless the adjudication of one had been recorded, before contracting of the other's debt; in which case it ought to be laid on the last.

THE LORDS found, That the inhibition affected the debts contracted after executing it, by the deficiency's being laid first on the debt ranked in the last

place; and so in order on the next; till the creditor, user of the inhibition, were satisfied. No 53.

CERTAIN of the preferable creditors of Sir Alexander Hope of Kerse, having petitioned for a sequestration of his estate, it was *alleged* for the debtor, That his rents exceeded the interest of his debt, and prayed that part of the estate might be exeemed from the sequestration, for his subsistence, which the petitioners declared they did not oppose; and thereupon the estate was sequestrated, excepting part thereof in the heritor's natural possession, and the factor burdened with an additional sum in name of aliment.

A process of sale was pursued, and petition presented for recalling the aliment, which was refused, as not having been authorised by, or intimated to the whole creditors; and it must be observed, that these were amongst the postponed; and at length, on a petition of many postponed creditors, craving that the aliment might either be recalled, or declared not to affect them, it was recalled.

After the sale, when a great deficiency appeared, it was disputed on whom this, in so far as occasioned by Sir Alexander's aliment, ought to be laid.

Pleaded for the preferred creditors, The deficiency must affect the postponed ones, as they are secured by their diligence.

Answered, The aliment was granted by their consent, which implied that they were to bear a proportional part of it.

Replied, They did not oppose the granting an aliment, when it did not appear there was a bankruptcy, and they saw themselves sufficiently secured; it was the same thing as if part of the estate had been exeemed from the sequestration, when the part sequestrated was sufficient to pay their debts; in which shape really the affair was partly executed; which would not have burdened them with accounting for any of the rents not sequestrated, and they did not, by any consent they gave, intend to part with any part of their debt.

THE LORDS found the deficiency occasioned by the aliment allowed to the debtor, behoved to affect the postponed creditors. See PERSONAL OBJECTION.

Reporter, *Elchies.* For the Preferred Adjudgers, *Brown.* Alt. *R. Craigie.*
Clerk, *Kirkpatrick.*

Fol. Dic. v. 3. *p.* 322. *D. Falconer, v.* 2. *No* 126. *p.* 143. & 127. *p.* 144.

1750. *June* 5. HORSBURGH *against* DAVIDSON.

No 54.
Whether an inhibition could connect with an

IN the ranking of the Creditors of Thomas Cranston of Birkhillside, the interests stood thus:—Horsburgh of that ilk was creditor by a personal bond, dated in May 1727, with inhibition upon it in March 1728, and Henry Davidson was creditor by an heritable bond, dated in August 1728, whereon he was in-