

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-