

1629. *January 21.*SCOT *against* TURNBULL.

A reduction upon an inhibition, for reducing of a disposition of lands made after the inhibition, was sustained, albeit the defender *alleged*, that the same was made to him for satisfying of a debt of money, owing by the person prohibited, who was a common debtor to both parties, and which debt was owing to him by obligation long before the inhibition; so that the obligation being of a date long anterior to the inhibition, as it was lawful to him to have taken payment of his said anterior debt, after that inhibition, so it was lawful to him to receive the said alienation for satisfying of the said debt, the same being made *ex hac causa*, and for satisfaction thereof, and bearing to be due for that cause; which exception was repelled, and the alienation after inhibition was reduced, albeit the bonds for the debt preceded; seeing the bonds bore not, that the debtor was obliged to give the party creditor an alienation of these lands for that sum, but was made upon borrowing of money to be repaid again; and albeit it bore also, that the debtor was obliged to infest the said defender in an annualrent for his money, out of any of his lands, which was found could not sustain the heritable alienation made after the inhibition.

The like decision was done *in terminis*, March 19. 1633, Kennedy and Irvine *contra* Captain Annand, in a reduction of a disposition of land, made by the common debtor to one of his creditors, for satisfying of a debt owing before the inhibition and the debt whereon it was served; notwithstanding whereof, the disposition of the land, done after the inhibition, was reduced by the second creditor, server of the inhibition.

Act. Stuart.

Alt. Cunningham & Scot.

Clerk, Gibson.

Fol. Dic. v. 1. p. 474. Durie, p. 415.

*** Spottiswood reports this case :

WILLIAM TURNBULL having the five pound land of Howden disposed unto him by John Turnbull, redeemable upon 2000 merks, and having served inhibition against John upon the same disposition, intended a reduction of a posterior infestment of the same lands given by the said John to Robert Scot of Hartwoodmyres, and that *ex capite inhibitionis*, as being done after the publication of his inhibition. *Alleged absolutor*, because long before the said inhibition, or yet before the ground of the debt whereupon it proceeded, the defender having become cautioner for the said John to certain persons for great sums of money, the said John Turnbull, by the said bonds, was expressly obliged to relieve him of his said cautionry; and true it is, the defender was compelled to make payment of the same sums long before the inhibition served at the pursuer's instance; and so John might very lawfully have disposed

No 93.

Found in conformity with Oliphant against Keith, No 91. p. 7025. that an absolute alienation of the property of land after inhibition, will not be supported by the circumstance, that the party inhibited had been under a previous obligation to give security for a debt.

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