

a contract, and an infeftment made by the said George to the said David after inhibition was executed against the said George at the instance of the said John Brown, it was *excepted* by the said David, That he ought to be assolizied from the reduction, because the sum contained in the contract and infeftment following thereupon craved to be reduced, was the duty of a tack set by the defender to the said George before the inhibition was raised and executed, and so he might lawfully take a new security therefor, notwithstanding of the inhibition. To which it was *replied*, That the decret (if any was obtained) for the tack duty, was obtained after the inhibition, and being a voluntary deed of the party inhibited, cannot take away the force of the inhibition. THE LORDS repelled the exception in respect of the reply.

No 94.

And this cause being again disputed 23d July 1631, the Lords reduced the said contract in so far as it might be a ground of infeftment for greater sums than were contained in the bonds made by the defender before the inhibition.

*Auchinleck, MS. p. 109.*

1633. March 9. FLEMING *against* His CREDITORS.

No 95.

CAPTAIN FLEMING being addebted to sundry creditors, and inhibited at the instance of ——— one of them, after inhibition, he makes disposition of the lands of Katherline for payment of certain others his creditors for sums addebted to them before the inhibition. ———, at whose instance he was inhibited, pursues reduction of the infeftment granted to ——— *ex capite inhibitionis*. It was *alleged* against the reduction, That his infeftment was granted for payment of true debts owing to C. A. before the inhibition which were specially inserted in his disposition, and so ought to be drawn back *ad suam causam*. To which it was *answered*, That although the debts for which the infeftment was granted were anterior to the inhibition, yet seeing by the said bonds, the debtor was not obliged to infeft them in his lands, in which case, the infeftment would have been sustained, but being personal bonds, the debtor could by no voluntary deed make prelation of one creditor to another, who had used greater diligence by serving of inhibition. THE LORDS repelled the exception in respect of the reply.

*Auchinleck, MS. p. 110.*

1639. March 6. L. SCOTSTARBET *against* BOSWELL.

No 96.

A party who was, prior to inhibition, bound to dis-

THE L. of Scotstarbet pursues reduction against William Boswell, for reducing of a contract of alienation of the lands of Pitodrie, made by David