No 64. of Sir James's disposition, that the transaction by which the whole price was made a burden on the lands, and also the heritable bond for L. 9000, being a deed entirely voluntary on the part of the debtor, must be affected by the inhibition. The Lords, on this ground, that an inhibition cannot affect deeds without which the granter could not have acquired the subject of competition, repelled the plea of the inhibiting creditors.

*Fol. Dic. v. 3. p. 323. Fac. Col.*

*** This case is No 3. p. 1384. *voce* Beneficium Cedendarum Actionum.

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1780. *February* 29. Dr Alexander Gordon *against* Alexander Milne.

No 65.
The Court was of opinion, that inhibition is no bar against granting tacks.

Isabel Gordon, heiress-apparent to her brother in the estate of Edintore, disponed these lands to Dr Gordon, under the reservation of her own liferent.

Soon afterwards, Dr Gordon used inhibition, in order to prevent her from doing any deed to the prejudice of his right thus acquired.

In fact, however, posterior to the inhibition, she let to Milne a lease of the lands for the term of nineteen years; before the expiration of the half of which she died.

Of this tack, Dr Gordon, having at length led an adjudication in implement of the aforesaid conveyance, and been infeft, brought an action of reduction; and he likewise insisted in a process of removing from the lands.

*Pleaded* for the defender; When the lease in question was granted, the disposition in favour of the pursuer was merely a latent deed, no infeftment till long after having been taken by him; while, on the other hand, Mrs Gordon was publicly known to have succeeded to her brother in the lands; and therefore the defender is entitled to reap the full benefit of a lease thus *bona fide* obtained by him. For tacks, however long their endurance may be, when granted by apparent heirs, like her, 'three years in possession,' with whom the lessees have *bona fide* contracted, are unquestionably valid; 27th June 1760, Knox *contra* Irvine and Forsyth, No 33. p. 5276. It is true the pursuer had executed a prior inhibition; but that diligence extends not to the granting of tacks, being limited in its effect to those deeds which touch the property, not merely the possession of lands; Lord Stair, b 4. tit. 50. § 2.; Erskine, b. 2. tit. 11. § 2.

*Answered;* By the disposition in the pursuer's favour, prior to the granting of the lease, the granter's right in the lands was restricted to a naked liferent; the consequence of which was, that the tack could not be effectual beyond the period of her life. The pursuer, it is true, was not then infeft; and his right, like that of his author, remained personal; but he had already used inhibition, which was sufficient to protect it from any encroachment. For as the granting of the tack in question to subsist after the death of the liferentrix, was an ex-

ercise of the right of property of which she was divested, and thus a wrong or tortious act with respect to her; so, after inhibition, all *bona fides* on the part of the person deriving right from her is necessarily precluded; and the deed, which it was wrong in her to grant, becomes, in the construction of law, an equal wrong in him to receive, and therefore is to be reduced *ex capite inhibitionis*. The defender indeed has supposed, that inhibition is not competent to guard against the granting of tacks to the prejudice of the inhibiter's right, as if that diligence could be of any service in such a case as the present, were the right of property nevertheless to be defeated at pleasure by the granting of leases; which it might be as effectually as by any alienation whatever. No 65.

The Court, however, seemed not to consider the inhibition as of any consequence in the case; but appearing to rest their judgment on this ground, that the defender, who had derived his right from a person not infeft, was not entitled to compete with the pursuer holding in his hands a charter and sasine of the lands;

"THE LORDS decerned against the defender in the actions of reduction and of removing." See PERSONAL and REAL.

Lord Ordinary, *Elliock*. Act. *W. Stewart*. Alt. *Elphinston*. Clerk. *Mackenzie*.

*S.* *Fol. Dic. v.* 3. *p.* 323. *Fac. Col. No* 109. *p.* 205.

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1782. *June* 19. JOHN WATSON *against* SARAH MARSHALL and Others.

No 66.
Inhibition effectual against a bond of corroboration, granted to the heir of the creditor.

BARCLAY was a creditor of Henry Alcorn by bond. Jean Crookshank, decerned executrix-dative *qua* nearest of kin to Barclay, sued James Alcorn, as representing Henry his grand-father, for payment of that debt. Crookshank, however, did not expede a confirmation; but, during the dependence of the action, obtained from James Alcorn a bond of corroboration of the original bond, upon which she obtained decreet, and afterwards led an adjudication.

Prior to this bond of corroboration, Sarah Marshall, another creditor, had executed inhibition against Alcorn.

In the ranking of Alcorn's Creditors, Watson, in the right of Jean Crookshank, produced, as his interest, the adjudication obtained by her; to which Sarah Marshal, and the other Creditors of Alcorn,

*Objected*; *First*, That Crookshank not having obtained confirmation, was never vested in the right of the debt. But

THE LORDS having considered the bond of corroboration as supplying the want of confirmation, and repelled the objection;

Marshall *next objected*; The above mentioned bond of corroboration, the only title upon which the decreets of constitution and of adjudication proceeded in favour of Jean Crookshank, was posterior to the inhibition in question, and therefore is void *quoad* the inhibiter; the granting of that deed being an act