

No 106.
anterior bond
of relief, the
disposition
was sustained.

after the husband's death, granted to Kincussie and Lairny a bond of relief of their cautionry in the year 1682; and in the year 1686, was inhibited by James Gordon his creditor for 1000 merks *per* bond, who adjudged the lands in the year 1691. Mr Alexander Irving did, in implement of this bond of relief, in the year 1687, dispone the same lands in favours of the cautioners; who being infest, that same year granted a disposition to Jean Gordon in the terms of her contract of marriage; whereupon there arose a competition for ~~mails and duties~~ betwixt her and her authors, and James Gordon, who claimed preference, in respect that his inhibition was anterior to the disposition made to them, though his adjudication was posterior.

THE LORDS found, That the infestment granted to Kincussie and Lairny is sufficiently supported by Mr Alexander Irving's bond of relief, and therefore preferred them.

Albeit it was *alleged* for James Gordon, That the antecedent personal bond of relief, which imported only an obligation to free and relieve them of any damage they might sustain through their cautionry, if distressed by paying up the jointure, could never support the infestment after his inhibition, unless the bond of relief had borne an obligation to infest, either generally or specially. In respect it was *answered*, That any anterior obligation, whether special or general, is sufficient to secure against the effect of an inhibition, 10th February 1672, Rig *contra* Beg, No 97. p. 7030.; 22d July 1675, Gordon *contra* Seaton and others, No 100. p. 7034. Besides, here the obligation to relieve was a tacit obligation to infest; seeing the cautioners were precisely bound to infest Jean Gordon, and could not be relieved of that engagement without infesting her.

Fal. Dic. v. 1. p. 475. Farber, p. 646.

SECT. V.

If Inhibition strikes against Renunciations, Recognitions, or Conditional Alienations.

No 107.

1622. February 26.

BURTS *against* GRANTULLIE.

ANDREW BURT's action for pointing the ground of Grantullie for an annual-rent which he had comprised, was sustained, albeit Grantullie *alleged*, That Merschell, who was infest under reversion, had renounced the annual-rent; because Burt had served inhibition against Merschell's author before the renunciation, and thereafter reduced his infestment; because he that renounced was not

infest holden of the superior; and Grantullie was permitted to dispute and propose that he could have alleged against the inhibition and action of reduction if he had appeared.

No 107.

Fol. Dic. v. 1. p. 475. Haddington, MS. No 2603.

1667. July 16.

ELES against WISHART and KEITH.

No 108.

INHIBITION does not strike against redemptions of wadsets, renunciation of annualrent rights, and other redeemable rights.

Fol. Dic. v. 1. p. 475. Stair. Dirleton.

* * * This case is No 85. p. 7020.

1667. December 10. MR ROGER HOG against THE COUNTESS OF HOME.

No 109.

MR ROGER HOG having appraised certain lands from the Laird of Wauchton in Alcambus, which were sold to Wauchton by the Earl of Home, with absolute warrandice; upon which warrandice there was inhibition used; whereupon Mr Roger pursues reduction of an infestment of warrandice of these lands, granted by the Earl of Home to my Lady, in warrandice of the lands of Hirsil, and that because the said infestment of warrandice is posterior to the inhibition. The defender *alleged*, That there could be no reduction upon the inhibition, because there was yet no distress, which with a decret of the liquidation of the distress, behoved to precede any reduction; and albeit there might be a declarator, that my Lady's infestment should not be prejudicial to the clause of warrandice, or any distress following thereupon, yet there could be no reduction till the distress were existent and liquidate. The pursuer *answered*, That a reduction upon an inhibition was in effect a declarator, that the posterior rights should not prejudice the ground of the inhibition, for no reduction is absolute, but only in so far as the rights reduced may be prejudicial to the rights whereupon the reduction proceeds.

A reduction *ex capite inhibitionis* was opposed, because the alienation was conditional. The reduction was sustained to take effect when the condition should be purified.

THE LORDS sustained the reduction to take effect, so soon as any distress should occur.

Fol. Dic. v. 1. p. 476. Stair, v. 1. p. 491.

* * * Dirleton reports this case :

1667. December 11.—AN inhibition being served upon an obligation to warrant; a reduction was thereupon sustained, though it was alleged there was neither decret of eviction, nor liquidation of distress; the pursuit being only