

1713. July 17.

JOHN WEIR, Perriwig-maker in Edinburgh, Supplicant, *against* ANDREW DEUCHAR, Procurator before the inferior courts there.

No 76.

UPON advising a complaint offered by John Weir against Andrew Deuchar (at whose instance execution was provided to pass upon the complainer's contract of marriage with Elizabeth Davidson, for implement in favours of the wife) for using inhibition against the complainer, upon a conditional obligation therein, before the condition was purified; albeit it could not be pretended, that the complainer was failing in his credit;—THE LORDS finding that there was no present just cause for raising this inhibition, which was done by Deuchar out of mere humour, without advice from the wife, they discharged the same. For though inhibition may proceed upon a conditional debt, it must pass *causa cognita*.

Forbes, p. 704.

S E C T. III.

What subjects are affected by this diligence.—Reaches *acquirenda*.

1603. January 28. BANDEANE *against* BALLEGERNO.

No 77.

FOUND, that an inhibition impedes not the party inhibited, being a beneficed person, to renew tacks to the only and kindly tacksman within the years of the old tack.

Fol. Dic. v. 1. p. 473. Kerse, MS. fol. 61.

1620. December 9. AITKEN *against* ANDERSON.

No 78.

THE LORDS found, that inhibition could not affect moveable goods sold in market.

Kerse, MS. fol. 61.

1623. March 22. L. BRACO *against* OGILVY.

No 79.
Inhibitions
affect only
heritable
rights and
lands.

L. BRACO pursuing a reduction of an assignation made by Mr David Wood to Ogilvy of Carse, of all the corns, goods, and gear, being and growing upon

the lands of Carse, the time of making the said assignation, which was in the month of July, the corns being then growing, unseparate from the ground; the reduction being upon this reason, because the cedent was inhibited by the pursuer long before the assignation, upon an anterior debt, and obligation made to him by the cedent;—THE LORDS assolvied from the reason *simpliciter*; because they found, that an inhibition only affects party's heritable rights and lands, that he cannot dispone thereupon after lawful inhibition served against him, but it affects not the moveable goods; so that, notwithstanding thereof, the person inhibited may dispone upon the same; for letters of arrestment, and not inhibition, affect moveables; and moveables are of that nature, that, falling under daily commerce, the dealing and trafficking therein ought not to cease by simple inhibition, without arrestment proceeding upon a lawful cause.

No 79.

Clerk, *Gibson*.*Fol. Dic. v. I. p. 473. Durie, p. 61.*

1623. July 5.

KIRKWOOD against BELSHES.

IN an action of reduction pursued by Robert Kirkwood, writer, against John Belshes, for reducing of the alienation of the lands of Toffs, made to the said John Belshes by William Douglas, as son and heir of umquhile Archibald Douglas, which umquhile Archibald was debtor to the said Robert Kirkwood in a sum of money; whereupon the said Robert having served inhibition against the said William, as son and apparent heir to the said umquhile Archibald his debtor; upon the said inhibition he pursues reduction of the said alienation, as made after the said inhibition. This inhibition, which was the ground of the reason of reduction, was quarrelled by the defender; as not being lawful and sufficient to affect the land; seeing the party inhibited was not debtor to the pursuer; neither was he ever constitute that person, at the time of the executing thereof, who could represent the pursuer's debtor, either by charge to enter heir to his debtor, or by any summons or pursuit against him for that debt, owing by him as heir; but was only executed against him as apparent heir to his father; which was not any ground, which may be a lawful warrant to inhibit; for inhibitions ought not to be granted against apparent heirs for their predecessor's debts; and if any such be granted, when they are quarrelled, they should not be sustained.—THE LORDS repelled the allegiance, and sustained the inhibition raised and executed against the apparent heir of the debtor, seeing thereafter he had served himself heir to him, and had sold the said lands.

No 80.

Inhibition against the apparent heir of a debtor sustained, though he had neither entered, nor was charged to do so, he having, after the inhibition, served himself heir, and sold the lands.

Act. *Oliphant*.Alt. *Belshes*.Clerk, *Hay*.*Fol. Dic. v. I. p. 473. Durie, p. 60.*