

1630. November 27. DOUGLAS against JOHNSTON.

MR THOMAS DOUGLAS of Stainypath pursues one Johnston for reduction of a bond made of a sum of money to Johnston by Joseph Lermouth the common debtor, with the comprising deduced thereon of the debtor's lands, because the same was done after a bond made of borrowed money to the pursuer, and inhibition thereon. In which process it was *alleged*, That the pursuer could not seek reduction *in toto* of the whole comprising of all the lands, seeing the lands were more worth than would pay both the party's whole debts; and the pursuer ought only to have reduction for so much of the lands as might pay himself, that the defender's right might stand to him for the rest; seeing the defender being but a poor man, and his debt being of a less sum, the pursuer, who was of greater substance, and whose debt was twice as great as his, it were more reasonable that he should be paid by the pursuer of his sums, than that he should be compelled to pay the pursuer his greater debt, which he had no power to do, specially the land being more worth than both their debts. This allegiance was repelled, and the pursuer was found to have good action to reduce the bond, and all that had followed thereupon *in toto*, ay and while he were paid of his debt, and that he was not holden to pay the defender his debt, albeit the land might satisfy them both.

Clerk, Hay.

*Fol. Dic. v. I. p. 477. Durie, p. 543.*

1632. January 20. MONTEITH against HALIBURTON.

JAMES MONTEITH, assignee constituted by William Davidson, to a bond granted by James Blair, and to an inhibition executed upon the same, intended a reduction of another bond granted by the said James Blair to Jean Haliburton, and of a comprising and infeftment following thereupon *ex capite inhibitionis*.—*Alleged, 1mo*, The pursuer's interest being only upon a bond and inhibition, could not be sustained for reducing of the defender's comprising and infeftment, especially being cloathed with seven years possession, so that the legal was expired before the intending of his action, unless the pursuer or his cedent had some real right by comprising and infeftment likewise.—THE LORDS repelled this allegiance, in respect that an inhibition gives one a good enough interest to reduce any posterior deed in prejudice of the said inhibition, albeit infeftment has followed thereupon.—*2do, Alleged*, The inhibition is null, because by act of Parliament 1581, c. 119. all inhibitions should be registrated in the Sheriff-clerk's books, or Stewart's, where the person inhibited has his land lying; but so it is, that the pursuer's inhibition was not registrated in the books of the regality of Dalkeith, where the said James Blair's lands lay.—*Answered*, That ought

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A prior inhibitor may reduce *in toto*, a posterior bond and apprising, altho' the subject be sufficient to pay both. He is not obliged to restrict his inhibition to as much of the lands inhibited as may be sufficient to pay his debt.

No 18.

Inhibition is a sufficient title to reduce posterior deeds, made in prejudice of it, though infeftment has followed on such deeds.