

the nature of the holding as a *reddendo*, *multo magis* would it prefer to casualities arising upon feudal delicts, which is *causa pœnalis*. It would have the like effect against liferent escheats. And the special privilege of quinquennial possession, by virtue of forfeiture for treason, arises from a particular law *ob bonum publicum*; to which all interests must cede.

No 113.

Duplied, In Powrie's practise, not only Muirie, who did the deed inferring recognition, was inhibited, but also Ramsay his author. And the argument of disparity urges as strongly against the practise, why inhibition should stop all recognitions.

Triplid, The inhibition did secure the inhibitor, as well as if Rome had transmitted the right with the burden of Ballenden's debt. And the interlocutor in Powrie's case, where it seems determined, that the purchaser of the lands after inhibition did recognosce them in prejudice of the inhibition, is but a single decision, and not clearly debated; nor could any ward lands be secure by inhibition, if the inhibited party might, notwithstanding the inhibition, effectually dispone, and the new vassal recognosce them by his deed. But the truth is, the acquirer is not vassal, *in quantum* the inhibitor is prejudged. And though an heir who succeeds by law may dispone or recognosce, notwithstanding of a personal inhibition served against his predecessor, that is not a singular successor by a voluntary right.

THE LORDS found, That the inhibition hindered recognition. See act 15th, Parliament 1686.

Fol. Dic. v. 1. p. 475. Harcarse, (RECOGNITION.) No 829. p. 236.

S E C T. VI.

Whether Inhibition secures not only the Debt, but all Diligence following on it.—Inhibition has effect only from the date of the Decree of Reduction.

1666. February 24.

GRANT against GRANT.

GEORGE GRANT having appraised a wadset right from Grant of Mornithe, and thereupon obtained a decret of removing, and mails and duties, against Grant of Kirkdails, reduction was raised thereof, and of the ground of the same, viz. of the wadset right, on this reason, that the one half of the sum was paid, and the wadset renounced *pro tanto*, long before the apprising.—It was *replied*, That there was an inhibition for the sum, whereupon the apprising proceeded, after which inhibition, if any payment was made, or renunciation granted, the same was reducible *ex capite inhibitionis*.—It was *answered*, That all that the inhibition

No 114.

A creditor used inhibition, and afterwards appraised for the debt. Between the inhibition and the apprising, the debtor sold the lands.

No 114.
After the apprising was expired, it was found that the appriser was not bound to accept payment of his debt.

and reduction thereupon could work, was in so far as might extend to the satisfaction of the sum; and now they were willing to satisfy the whole sum, *cum omni causa*.—It was *answered*, That no satisfaction could be now accepted; because apprising having followed upon the same, and being expired, and no satisfaction being offered within the legal, or the time of the reduction, it cannot now be admitted.—It was *answered*, That the inhibition could not only work, that nothing done after the same should be prejudicial to the sum, but altered not the case as to the apprising led long thereafter; unless the inhibition had been raised upon the apprising.

THE LORDS found, That inhibition could not be taken away or satisfied by payment of the sums after the expiring of the apprising; wherein the President remembered of a former case, that even in the obtaining of the reduction *ex capite inhibitionis*, the offer to satisfy the sum whereon it proceeded was repelled, in respect an apprising thereupon was expired.

Eol. Dic. v. 1. p. 476. Stair, v. 1. p. 366.

1670. July 8. Lady LUCY HAMILTON *against* BOYD of Pitcon and Others.

No 115.
Found in conformity with the above.

THE Earl of Abercorn having sold the lands of Mountcastle to George Hay, he gave the Earl a bond of 4000 merks, bearing borrowed money, but being a part of the price, and bearing this provision, that it should not be payable till the Earl obtained George infest by his superior. The Earl assigns the bond to Lady Lucy his sister, who having raised inhibition upon the bond against George Hay, and having thereafter charged him, he suspended, *alleging* that the condition was not fulfilled, he not being infest; and the Lady offering a part of the sum to purge that condition, *pro damno et interesse*, and to procure his infestment, George accepted of the offer, and thereupon the letters were found orderly proceeded for 3000 merks of the sum, and suspended for the rest in place of the condition; upon this decret the Lady apprises the lands of Mountcastle, and now insists in a reduction of a disposition of the same lands, granted to Dunlap and Pitcon for themselves, and to the use and behoof of the disponder's other creditors underwritten, viz. where there was a blank of several lines, which is now filled up by another hand; and though this disposition was anterior to the inhibition, and did prefer Dunlap and Pitcon for any sums due to themselves, or for which they were cautioners the time of the disposition; yet the LORDS found by a former interlocutor, that as to the other creditors filled up in the blank, it should be reputed as posterior to the inhibition, and filled up after the same, unless the creditors prove by the witnesses insert, or other witnesses above exception, that they were filled up before the executing of the inhibition. The cause being called this day, the creditors repeated their former allegiance, and offered to prove that their debts were anterior to the inhibition, and also that at the subscribing thereof, it was communed and