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was taken, without respect to the relief that might be expected out of the other lands. 5to, THE LORDS repelled the allegiance that the infeftments were in trust, as it was qualified, viz. That they were in the vassal's charter-chest, and that he detained the possession, except that the vassal's fraud or dole were instructed, or that the gift were to the vassal's behoof. 6to, THE LORDS repelled the defence founded upon the resignation made by old Cromarty in favour of his son, albeit bearing a confirmation of what relates to rights made to the vassal, and not to rights made by the vassal. 7mo, Repelled the defences founded upon the inhibition, which was prior to the deeds made use of for making up the recognitions. 8vo, Found that the infeftments that were *habile modo* extinguished before the concurrence of the major part, cannot come in competition. 9mo, That sasines which are intrinsically null, are not to be respected as grounds of recognition.

*Fol. Dic. v. 1. p. 475. Sir P. Home, MS. v. 1. No 473.*

\* \* \* This case by P. Falconer and Harcarse, is No 60. p. 6467.

*voce* IMPLIED DISCHARGE and RENUNCIATION.

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Where an inhibited person had disposed with consent of the superior, a deed inferring recognition by the disponent, was found not to prejudice the inhibitor, because *quoad* him the disposition was understood to be null.

1687. July. SIR JOHN FALCONER *against* JOHN BALLANTYNE.

IN a declarator at the instance of Sir John Falconer, as donatar of recognition of Provost Græme's lands, compearance was made for one John Ballantyne, who *alleged*, That he had raised reduction *ex capite lecti*, of Provost Græme's right, as flowing by progress from George Rome, after he stood inhibited by the defender's father.

*Answered*, Inhibition giving no *jus in re*, the right of the lands was validly transmitted to the Provost, who being vassal, was capable to commit the deed of recognition, whereby there is *jus quæsitum* to the superior. And it was found in Powrie's case, \* that inhibition whereupon the creditor had no real diligence, did not hinder recognition.

*Replied*, Though inhibition did not hinder the transmission of a real right, as to all effects, but only in so far as prejudicial to the ground of the inhibition, yet the right is transmitted *cum suo onere, quia nemo plus juris tribuit quam ipse habet*, and the cited practice does not meet; for in Powrie's case recognition was incurred by a person inhibited, who was full and unlimited vassal to the superior. But here the feu being transmitted after inhibition *cum onere*, Græme can only be considered a vassal as limited by the inhibition against this author, who could not by his deed prejudice the same; for if Græme's ward had fallen, and thereafter his right had been reduced *ex capite inhibitionis*, the inhibitor doing real diligence against the land, would certainly have access thereto, unless the donatar of the ward did purge the ground of the inhibition. And if inhibition would exclude the superior from the ward profits, which arise from

\* The case alluded to is Hay against Creditors of Murie, No 61. p. 6470.

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.

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*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.*

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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 apprised 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

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