

1734. November 28. DICKIE against CREDITORS of THOMAS ANDERSON.

No 83.

A brewer was bound to pay a certain sum, as a composition for impost on what ale he should import. As he might have imported none, inhibition could have no effect as to impost arising after its date.

As the brewers without the liberties of Edinburgh, are, by the statute, subject to the impost of two pennies on the pint, only with respect to ale imported into the town, this occasioned a great expense to the tacksmen of the town's impost, being obliged to have waiters at all the avenues leading to the town for collecting this duty; to save this expense the tacksmen were in use to bargain with these brewers to subject themselves to an impost for the whole ale brewed by them, as it should be made out by the excise-books; and to move them to this agreement, generally the one half of the impost was given down due upon imported ale. Upon one of these contracts Thomas Anderson brewer was charged with horning, to make payment of seven pence for every barrel of ale he should brew during the currency of the obligation, and upon the same contract was thereafter inhibited. Thomas Anderson becoming at last insolvent, in a competition, the LORDS found the horning and inhibition null, *quoad* the impost arising due after their date, and that they could be the foundation of no preference against the other creditors. It was allowed, That diligence may be done upon an obligation *in diem*, or even upon a conditional obligation, if the debtor is *vergens*. In conditional obligations the debtor is bound upon existence of the condition, and he has no power in the mean time to liberate himself; a debtor *in diem* is bound in the most proper sense, though instant demand cannot be made; but the present is neither one nor other. An obligation to pay a certain duty, in case one chooses to brew, depends entirely upon the will of the debtor, whether there shall be any thing due or not, and therefore it is no obligation at all. It might as well be maintained, that the brewers within the town might be directly attacked with horning and inhibition upon the statute, for payment of the duty arising upon whatever they should brew thereafter.

*Fol. Dic. v. 1. p. 542.*

1757. August 11. STIRLING against NISBET.

No 84.

A MAN who had granted a bond to his daughter, payable at the death of a certain person therein named, having conveyed his whole estate to his son, with the burden of this bond, the husband of the daughter used inhibition and arrestment in the son's hands. Upon the application of the son, who *argued*, that unless he had been *vergens ad inopiam*, no diligence could be taken out against him on a debt not yet due, the LORDS recalled the inhibition and loosed the arrestments.

*Fol. Dic. v. 3. p. 381. Fac. Col.*

\* \* \* This case is No 59. p. 6994, *voce* INHIBITION.

Diligence upon bonds of relief; see CAUTIONER.—See APPENDIX.