

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.*

* * Haddington reports this case :

No 80.

IN the action betwixt Robert Kirkwood and John Belshes, for reduction of John's infeftment of the Tofts, as granted after that William Douglas, John Belshes' author, was inhibited at Robert Kirkwood's instance ;—THE LORDS sustained an inhibition raised against an apparent heir, who was neither served nor charged heir ; and found, that whenever the apparent heir entered heir, the inhibition convalesced and was drawn back to the time of the serving thereof, and was a lawful ground to reduce all alienations made by the apparent heir, since the date of the inhibition.

Haddington, MS. No 2888.

1627. June 23.

M'MILLAN against GORDON.

No 81.

A tack of teinds, clad with possession, preferred to a prior tack let by the same author, but on which there was no possession, altho' inhibition was executed on the first tack, before granting the second.

MR JOHN M'MILLAN being assignee by Thomas Ferguson to certain teinds, which Thomas was made subtacksman of the same to Mr Gilbert Gordon of Shirmes, who was principal tacksman of the same, pursues John Gordon of Troquhan for the same, and refers the quantity to his oath ; and, after the day of compearance, a term being assigned to his procurator to exhibit him to depone, at the term he compeared by his procurator, and proponed an exception, which the Lords found might be proponed *in eo statu processus*, albeit it was contended, that it could not be received then ; and the exception being, that the defender had a subtack of the said teinds from the said Mr Gilbert Gordon, their common author, by the space of four years before the year controverted, which albeit it was after the alleged subtack set by him to Thomas Ferguson the pursuer's author, and who also had served inhibition thereupon before the excipient's subtack ; yet, seeing the excipient's tack was clad with possession continually since the date thereof, and seeing that he offered to prove, that the said Mr Gilbert was ever in possession of the teinds for all years, until the time of the defender's right, notwithstanding of the said subtack set to Ferguson, which took never effect by possession ; the same therefore, albeit preceding his right, and inhibition executed thereupon, also before his subtack, cannot put him in *mala fide* to have taken his tack, and bruiked the teinds since the date thereof, viz. *anno 1622*. This exception was sustained to elide this pursuit, and was admitted to probation.

Act. ———.

Alt. *Belshes.*

Fol. Dic. v. I. p. 473. Durie, p. 299.