

No 115.

** Dalrymple reports the same case :

DR IRVING having right by process to a decret of Council against Newgrange and his Lady, for unwarrantable intromitting with, and cancelling an heritable bond, granted by the said Newgrange to the Countess of Southesk; William Oliphant raises a reduction of the disposition and assignation of the said bond, *ex capite inhibitionis*, alleging, that the said decret of Council being *surrrogatum* in place of the said heritable bond, was an heritable right; and consequently was reducible, as being posterior to the pursuer's diligence; for, albeit inhibitions do not reach alienations of moveables, notwithstanding of the style of the letters prohibiting the party to dispose thereof; yet all heritable rights are affectable thereby; and, though the 51st act, Parl. 1661, does provide, that heritable bonds shall be arrestable; yet it declares, that such bonds shall remain in their own nature unchanged, as to all other effects; and, before that act, and more especially before the 1641, no bond bearing annualrent being arrestable, all dispositions thereof were reducible *ex capite inhibitionis*.

It was answered; Inhibitions relate only to rights of lands and moveables upon lands, which are *species* or *corpora*, but not to bonds or obligations, whether heritable or moveable, unless infeftment had followed; which is the opinion of my Lord Stair and Dirleton. Neither does the style prohibiting alienations, dispositions, &c. mention bonds, except in that part thereof where contracting of debt is forbidden; and there bonds are expressly mentioned, because contracting of debts, and granting of bonds, are the foundation of diligence that might affect and carry away lands against the design of that prohibitory diligence, which, by style, reaches not the bond, nor, by custom, any moveables. *2do*, No purchaser of conveyances to bonds did ever search the Register for inhibitions; because they were never understood affectable thereby; neither does it import, as to the present question, whether such rights were arrestable before the 1641, or not.

“THE LORDS found, That assignations to heritable bonds, whereupon no infeftment followed, though containing a clause to infeft, were not reducible *ex capite inhibitionis*.” See INHIBITION. *Dalrymple, No 45. p. 58.*

 SECT. XX.

Claim of Relief.

No 116.

1628. July 10.

CANT against EDGAR.

A CAUTIONER having paid an heritable bond before his decease, the LORDS found; that the benefit of the relief belonged to his executors, although he had

