

No 96.  
pone lands,  
executed the  
disposition  
after inhibi-  
tion. The  
disposition  
was not only  
sustained, but  
preferred to  
a posterior in-  
feftment giv-  
en to the in-  
hibiter.

Boswell to the said William Boswell, defender, redeemable upon payment of 10,000 merks, with an inhibition served by the said William upon the said contract; the reason was founded upon a disposition of the said lands, irredeemable, made by the said David Boswell to Henry Mauld of Melgum, who was infest, and which Henry had disposed the same to Sir John Scot pursuer; and the defender *alleging* against this reason, that it was not relevant, seeing both the pursuer's right, and his author's, are after the excipient's contract and inhibition; and as the same are in law good grounds to reduce the pursuer's rights libelled, so must they be found good grounds to elide this reason. The pursuer *replied*, that albeit the contract and infestment granted to his author be after the defender's contract and inhibition, yet there was an anterior contract preceding the defender's contract and inhibition, by the which the said David Boswell sold to the said Henry Mauld the said lands; and the posterior disposition of selling of the said lands, albeit done after the inhibition, yet the same depending upon that contract, which preceded the said inhibition, the said subsequent infestment granted thereafter, and contract, ought to be drawn back to the first, and the intervening inhibition cannot be found any impediment to have stayed the acquiring of the second right depending upon the first, and made conform thereto. The LORDS repelled the allegiance, and found, that the intervening of the defender's contract and inhibition, betwixt the pursuer's author's first contract, and before the pursuer's author's second contract, was no impediment, but that his said author might lawfully perfect the contract after that inhibition, seeing the same depended upon the prior contract before the inhibition; and that the second was made according to the first, and for implement thereof.

Act. *Advocatus.*

Alt. *Gilmore & Sibbald.*

Clerk, *Hay.*

*Fol. Dic. v. I. p. 474. Durie, p. 879.*

No 97.  
Inhibition  
found not to  
reduce a pos-  
terior infest-  
ment in life-  
rent granted  
by a husband  
to his wife  
being in im-  
plement of  
a contract of  
marriage  
prior to the  
inhibition,  
tho' the hus-  
band was not  
bound to in-  
fest his wife  
in these  
lands in par-  
ticular.

1672. February 10.

RIGG against BEGG.

IN a competition for the mails and duties of certain tenements in Edinburgh, Elizabeth Rigg being infest in liferent for implement of her contract of marriage, and Thomas Begg having appraised the same tenements, and being infest after the said Elizabeth, she craved preference, as being first infest; whereunto it was *answered*, that albeit Begg's infestment be posterior, yet the common author was inhibited before her infestment at Begg's instance upon the same sum whereupon she appraised, and is infest, and repeated his reduction upon the inhibition. It was *replied*, That albeit the relict's infestment be posterior to the inhibition, yet it is for implement of a contract of marriage, which is prior to the inhibition, and bears an obligation to infest her in lands

or annualrents for such a sum. It was *duplied*, That the obligation was only general, and not to infest her particularly in this land. No 97.

THE LORDS preferred the liferentrix.

*Fol. Dic. v. 1. p. 474. Stair, v. 2. p. 68.*

\* \* \* Gosford reports this case :

IN a double pointing raised at the tenant's instance of a tenement of land in Edinburgh, it was *alleged* for Elizabeth Rigg, that she was infest in liferent in the said tenement before all others, and so ought to be preferred. It was *answered* for John Begg, That her real right being after inhibition, at his instance, whereupon he had intented reduction, the same ought to be reduced, and could give her nought. It was *replied* for the said Elizabeth, That her infestment depended upon her contract of marriage, prior to the inhibition, bearing an obligation to employ upon land or annualrent the sum of L. 10,000 to her in liferent, and the bairns of the marriage in fee. It was *duplied*, That the obligation in the contract of marriage, not being special to infest her in this tenement, it being only general, the inhibition being prior to her infestment, did affect the same.

THE LORDS did prefer the said Elizabeth, and found that albeit the obligation was general, that the inhibition could not hinder the husband to infest his wife in special lands, seeing they might be ascribed thereto, and that she was not provided otherwise to lands equivalent to the liferent contained in the contract of marriage.

*Gosford, MS. No 473. p. 245.*

1673. June 24.

MARJORY HALYBURTON and Her HUSBAND *against* GEORGE MORISON of Bognie.

IN a reduction, pursued at the said Marjory's instance, and her husband, as having right by progress from Patrick and George Watts, in and to the sum of one thousand three hundred merks, for which they had recovered decret against John Watt, their brother; and, upon the dependence, had served inhibition against him, after which he had made a disposition to Morison of Bognie, of the mill and lands of Fergie; it was *alleged* for the defender, That albeit the disposition was after the inhibition, yet it depended upon a prior cause and obligation, to which it behoved to be drawn back, notwithstanding of the inhibition; in so far as the said John Watt, by a minute of his contract of marriage, for his tocher, received by him from his wife, was obliged to provide to her in liferent, and the heirs of the marriage in fee, the sum of two thousand and five hundred merks, or to a wadset equivalent thereto; and accordingly, having children begotten of the marriage, did infest them in the said lands; so that

No 98.

A general obligation to provide children of a marriage to a sum or to a wadset equivalent, was found to secure a special infestment, altho' inhibition was served before the infestment.