

1677. November 23. SIBBALD against SIBBALD.

By a contract of marriage John Sibbald was obliged to employ 8000 merks to himself and his future spouse, the longest liver of them two in liferent, and to the heirs of the marriage in fee. Anna Sibbald being the only bairn of the marriage, her father disposed to her a tenement in the Canongate, redeemable for 4000 merks, containing also a clause of requisition, whereupon Anna required and obtained decret against her brother, and adjudged that tenement, and some other lands in Fife. Thomas Sibbald, as being a creditor to the father, raised reduction of this adjudication *ex capite inhibitionis*. The defender *alleged*, Absolvitor, because though her bond from her father was posterior to the inhibition, yet it was *ex causa anteriori*, viz. his obligation in the contract of marriage. It was *replied*, That that clause could not exclude the inhibition, because it was only an obligation to employ a sum to the future spouse in conjunct-fee, and to the bairns of the marriage in fee, which could never have compelled the father to give a bond of provision to the daughter, and therefore cannot defend that bond of provision against that inhibition, but, on the contrary, if the clause of employing had been fulfilled, the daughter would have been heir of provision, and so liable to her father's debt, if there were not an heir of line, having an estate to discuss.

THE LORDS repelled the defence, and reduced the bond by the father to the daughter, being after the inhibition, and found it not to be contained in the obligation to employ for the future spouses in conjunct-fee, and to the heirs and bairns of the marriage in fee.

*Stair, v. 2. p. 565.*

\* \* \* Fountainhall reports this case :

THOMAS SIBBALD, writer in Edinburgh, raises a reduction of a corroborative right granted by one Sibbald, his debtor, in favours of his daughter, as being in prejudice of the debt lent by him *bona fide*, not knowing of that clandestine provision. *Alleged*, This corroborative right depends on her mother's contract-matrimonial, long prior to the contracting of this pursuer's debt and inhibition. THE LORDS found his reason of reduction, *ex capite inhibitionis*, relevant, because the obligation in the contract of marriage was but a naked destination in favours of heirs of the marriage. If this obligation had been more valid, and special, the corroborative right would have been sustained, though to his own daughter.

*Fountainhall, MS.*

No 44.

A bond by a father to his daughter reduced as after inhibition, and not falling strictly under the terms of the engagements in the contract of marriage.