

No 66. entirely voluntary, and which could not by any action have been enforced; Stair, b. 4. tit. 20. § 28.; b. 4. tit. 50. § 11.; Bankton, b. 1. tit. 7. § 138.; Erskine, b. 2. tit. 11. § 11.; Fountainhall, 29th January 1696, Wilson and Logan *contra* Penman, No 103. p. 7036.

*Answered*; This inhibition did not strike against the original ground of debt, which still subsisted. Neither did the corroboration create any new debt; its only effect was, to preserve against prescription, or to save the expense of expediting a confirmation.

THE LORDS found the inhibition to strike against the bond of corroboration, as being posterior to it, and serving to create a title to the prejudice of the inhibiting creditor.

They therefore sustained the objection. See SERVICE and CONFIRMATION.

Lord Ordinary, *Alva*.  
Alt. *Currie*.

For the Objectors, *Ilay Campbell, Craig, Mat. Ross*.  
Clerk, *Colquhoun*.

S.

*Fol. Dic. v. 3. p. 323. Fac. Col. No 45. p. 72.*

No 67. 1785. July 24. DOUGLAS, HERON, and Co. *against* BROWN.

INHIBITION does not strike against a new bill granted for an old debt which subsisted prior to the inhibition.

*Fol. Dic. v. 3. p. 323. Fac. Coll.*

\* \* \* See this case, *voce* INNOVATION.

1787. August 8. LORD ANKERVILLE and Others *against* JAMES SAUNDERS and Others.

No 68.

Inhibition not competent to render effectual against creditors a deed by which a person obliges himself, in favour of others, not to sell or impignorate his lands, nor to contract debt by which they may be burdened.

MR ROSS-MONRO of Newmore entered into a contract with Lord Ankerville, and other persons, nominated as his successors in that estate, by a deed of settlement executed by Lieutenant-Colonel Monro, his predecessor, which, however, left him at liberty to sell the estate or burden it with debts.

By this contract, Mr Ross-Monro bound and obliged himself, and his heirs, that he should in no wise alter, innovate, or change the course and order of succession of the said estate, as established by the disposition and destination executed by the deceased Lieutenant-Colonel John Monro, nor do any act or deed, directly or indirectly, that may frustrate the same: And further bound and obliged himself, and his aforesaid, that he should not sell, dispoise, wadset, or impignorate the lands and estate above mentioned, or any part or portion thereof, nor grant infeftment of annualrent or annuity forth of the same, or any other right, redeemable or irredeemable, whatsoever; nor should he

' contract debt, nor do any other fact or deed, whereby the lands may be any  
' wise burdened.'

No 68.

Upon this contract letters of inhibition were raised, which were regularly recorded.

Afterwards Mr Ross-Monro contracted various debts; and Mr Saunders, as creditor in these, having deduced an adjudication of the estate, Lord Anker-ville instituted a reduction of those debts; and

*Pleaded*; As a proprietor may sell his estate, or affect it with debt, so he may oblige himself, in favour of another party, to preserve it free from debt. This personal obligation may be rendered by inhibition, as in the present case, effectual against singular successors. Every lawful obligation, whether respecting the payment of money, or the conveyance of land, may be thus secured: For example, a minute of sale, or (as was found 22d July 1724, Douglas *contra* Douglas, *voce* PROVISION TO HEIRS AND CHILDREN,) an obligation in a marriage-contract by the husband, to settle a land-estate upon the wife and children. Nor does the case of entails afford any exception to this rule; being regulated by a special enactment, and not by the common law.

*Answered*; Inhibition is limited to such cases as admit of that diligence being purged by payment of the debt on which it proceeds, or by finding caution, and does not, as here argued, operate a permanent or general incapacity to contract debts. This appears from Lord Stair, b. 4. tit. 20. § 28. where a specimen of the proper style of inhibition is given. Such restraint is only permitted with respect to entailed property, guarded by irritant and resolute clauses; for prohibitory clauses have not that effect, though followed by inhibition; 22d January 1760, Bryson *contra* Chapman, *voce* TAILZIE. And if so, the use of that diligence in the present case must be equally unavailing. It is indeed an attempt to construct an entail in a way which the law does not authorise.

THE LORD ORDINARY reported the cause; when

THE COURT were clearly of opinion, That the inhibition was inept and unavailing; but decerned in favour of the pursuer, on a different ground.

Reporter, *Lord Henderland.* Act. *Rolland.* Alt. *Blair.* Clerk, *Menzies.*  
S. *Fol. Dic. v. 3. p. 322. Fac. Col. No 347. p. 537.*

1796. December 14. HENDERSON *against* STUART and HENDERSON.

No 69.

THE production of a personal ground of debt in a ranking and sale, does not make the debt heritable, so as to be affected by an inhibition.

*Fac. Coll.*

\* \* This case is No 94. p. 5534. *voce* HERITABLE AND MOVEABLE.  
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