

*tæ liberalitates*; and here there was good reason for it; supposing there might have been four or five children of that second marriage, Agnes would have taken only 200 merks of the 1000; and therefore her father gave this additional provision to herself *nominatim*, and does not say that it is in satisfaction of the contract. THE LORDS found the last bond to be in implement of the contract of marriage, and that they were not both due, and therefore restricted the adjudication to one of the 1000 merks, and its annualrent allenary. The second reason of reduction was, that the inhibition served on the general charge to enter heir was null, because the charge did not specially mention the grounds of the debt now insisted on; and by the late decision betwixt the Lord Ballantyne and Arniston,\* it was found such a charge must be special. *Answered*, The condescendence was sufficient, seeing it mentioned debts in the general. THE LORDS found this not to be enough, but it behoved to be special. The third reason was, that the decret is null, because it does not bear, that *avisandum* was made with the production, and a warrant obtained to discuss the reasons summarily, as all well extracted decreets ought to do, this being an essential part, *inter solennia*. *Answered*, Few decreets bear that *per expressum*; and it is to be presumed the clerks would not omit it, if it were for no more but their own dues; and it could not be enrolled without a warrant. THE LORDS found this omission no nullity, but that it was to be presumed to have been really done. See PRESUMPTION.

*Fol. Dic. v. 1. p. 472. Fountainhall, v. 2. p. 337.*

1713. February 17.

JEAN LIVINGSTON and Mr WILLIAM TAIT, her Husband, *against* ROBERT FORREST, Merchant in Edinburgh.

IN the reduction *ex capite inhibitionis*, at the instance of Jean Livingston and her husband against Robert Forrest, the LORDS sustained an inhibition upon a general charge to enter heir, given by Mr David Lyon, writer to the signet, to John Robertson, apparent heir to Gilbert Robertson of Whitehouse; in so far as concerned three thousand and fifty merks of principal, libelled in the general charge to be due by Gilbert Robertson to Mr David Lyon, by several bonds produced; and in so far as concerned the annualrents of the said sum, since the date of the execution of the general charge; but not as to preceding annualrents, nor yet as to the penalties in the bonds;

Albeit it was *alleged* for the defender, That inhibitions do regularly proceed upon liquid obligations to pay or perform, granted by, or upon a depending process against the person inhibited; whereas a general charge to enter heir is no obligation of the apparent heir, nor a dependence against

No 38.

Inhibition sustained upon a general charge to enter heir, in so far as concerned debts particularly libelled in the general charge.

\* Examine General List of Names.

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him, but a preparatory step to an action upon the passive titles, without any conclusion of payment ;

In respect it was *answered*, It is true, when inhibition is used upon a general charge, it doth not suffice, that the letters of charge bear only in general, That the charger had diverse and sundry claims ; but they ought to mention the debt, for certiorating the lieges, as to the sums in prejudice whereof they were not to contract with the inhibited person, which is done in this case. *2do*, John Robertson, having, upon the charge to enter heir preceding the inhibition, refused to renounce, and suffered thereafter a decret upon the passive titles to pass against him, he is understood to have been heir *retro* from his predecessor's death ; and the inhibition raised and executed against him is the same in law as if it had been raised upon his own personal bond ; he being in all respects *una et eadem persona cum defuncto*. Therefore it was, That *July 5. 1623. Kirkwood contra Belshes, No. 80. p. 7017.*, the Lords sustained an inhibition against the apparent heir, though neither charged to enter, nor decerned upon the passive titles, in regard he entered heir *ex post facto*. *3tio*, A charge to enter heir is considered as the commencement of a process, in so far as it renders the matter litigious, and interrupts prescription. Again, if a creditor who hath charged his debtor's apparent heir to enter, could not secure himself by inhibition, the charge would alarm the heir, and put him upon methods to disappoint it. *4to*, It is more convenient to use inhibition upon a general charge, than upon a summons of constitution ; partly, for that the inhibition upon a summons would fall therewith if the summons ly over year and day without insisting ; partly, because a general charge may be executed against an apparent heir within the *annus deliberandi*, and inhibition thereon secures against his deeds in the *interim*.

*Fol. Dic. v. 1. p. 472. Forbes, p. 669.*

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1714. *November 22.*

CREDITORS of ROSEHILL *against* CREDITORS of the deceased Mr WILLIAM THOMSON.

No 39.  
An inhibition raised before a summons was executed, found null.

MR WILLIAM MOIR having raised summons upon the passive titles, against John Ross of Rosehill, as representing his father, dated the 8th, and signed the 9th of May 1693, and (before executing thereof) raised also letters of inhibition, containing arrestment, dated the 11th, and signed the 12th of the said month and year foresaid ; Mr Moir assigned the debt and diligence to Mr William Thomson writer to the signet, who obtained decret in absence against John Ross, and then adjudges. This having occasioned a competition betwixt his creditors and the other creditors of Rosehill, Mr Thomson's creditors crave