No 68.

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

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 Ankerville 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 resolutive 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.