

*Pleaded* in a reclaiming bill, the inhibition being marked by the clerk, is presumed to have been registered; and though it should be granted that if it never actually was, it would be null, yet the fatality of the loss of the record, ought not to affect a private person, who had not the charge of keeping it.

*2do*, Although the book were produced, and it appeared never to have been registered, yet being marked on the back, it ought to be sustained by the intention of the act 19, Parliament 1686, sustaining sasines so marked upon, which is declaratory of the act 16, Parliament 1617, establishing registers; for, it bears to be without prejudice thereof, which it could not be, if it statuted any thing new; and therefore the act 18, Parliament 1696, is to be considered as a new statute.

THE LORDS, on enquiring into the state of the register of Kirkcudbright, and finding there was no book from the year 1621, till 6th April 1665; so that it could not be presumed there ever was a book in which this was registered, 'refused the petition.'

Act. A. Macdouall.

Act Boswell.

Clerk, Kilpatrick.

D. Falconer, v. I. p. 57.

1745. June 27.

RUTHERFORD against STEWART.

AFTER the death of Colonel John Stewart of Stewartfield, John Stewart his son and heir granted bond of corroboration to Anna his sister of her bond of provision, containing only the principal sum and annualrents without accumulation, upon which she led adjudication.

In a ranking of the Creditors of Stewartfield, Rutherford of Bowland having objected to this adjudication, as proceeding upon the bond of corroboration granted posterior to an inhibition at his instance against the granter; the LORDS found, "That as the bond of corroboration contained only the principal sum and annualrents, and no accumulations, the inhibition did not strike against the same." Notwithstanding it was *argued*, That inhibition strikes against posterior voluntary rights; and that as to the effect of inhibition, every right is considered as voluntary, to grant which there is no preceding special obligation, such as the party can be compelled by process to fulfil; for as there was nothing in the bond of corroboration, but the original debt, against which the inhibition did not strike, and that the purpose of granting it was no other than to save the creditor the expense of a constitution, it was thought rather to be a catching at the words, than following the spirit of the law, to find that the inhibition affected the bond.

For the better understanding the ground on which this decision stands, *vide* Horsburgh of that ilk, *contra* Davidson, No 54. p. 6985.

*Fol. Dic. v. 3. p. 322. Kilkerran, (INHIBITION.) No 5. p. 287.*

No 46.

No 47.

Inhibition found not to affect an adjudication proceeding on a posterior bond of corroboration containing only principal sum and interest due by a former bond.