by the conception of the clause in the contract of marriage, the daughters were not heirs of provision, nor was the provision thereby conceived in their favour a simple destination of succession; but found, that, by the contract, the daughters were formally stated creditors to their father; and, therefore, repelled the grounds of preference proponed for the posterior creditors; and preferred the children, according to their diligence, the same having been raised in the childrens' own name against the father in his lifetime, after the elapsing of their respective terms of payment. The other decision, the Children and Creditors of Sir Robert Preston, (IBIDEM) 'where Sir Robert having, in his marriage-contract, obliged himself to pay a certain sum to the heirs and bairns of the marriage, at their age of 15 years, and to infeft them in lands for their security; in a competition betwixt the Creditors and Children, though it was pleaded for the Creditors, that the obligement in the contract of marriage was only a destination of succession, and being a private latent deed, could not prejudge posterior creditors;' yet the LORDS found, that the children of Preston, by their father and mother's contract of marriage, were only heirs *designative*, and not heirs substitute, but real and formal creditors for the sums therein contained.

No 58.

2do, It was *contended* for the Daughter, That since she was clearly a creditor by the obligation, an adjudication was the only proper diligence for securing her claim, and enabling her to compete with her father's other creditors, who might otherwise have excluded her.

THE LORDS found the creditors not preferable, but that the daughter must come in *pari passu* with them, according to their several diligences.—*See* PROVISION TO HEIRS AND CHILDREN.

Duncan Forbes & *John Ogilvie* for the Creditors. Alt. *Ro. Dundas Advocatus.*
Clerk, *Dalrymple.*

Edgar, p. 6.

SECTION VIII.

Inhibition.

1611. *November* 27. GAVIN HAMILTON of Raploch *against* BRISBANE.

No 59.

IN a double poinding betwixt the Guidman of Raploch and Mr William Brisbane, for the mails and duties of certain lands, wherein Gavin had infeft his son Claud

No 59.

40 years; since which Claud had made Mr William Brisbane assignee to his right, and infeft him in it; yet Gavin Hamilton of Raploch was ordained to be answered, because his son had, before any right made by him to Brisbane, given a bond to his father, to suffer him to bruik during his lifetime, whereupon he had served inhibition before Brisbane's right.

Fol. Dic. v. 1. *p.* 542. *Haddington, MS. No.* 2317.

No 60.

1622. *March* 19. Napier *against* Lithgow.

In a reversion pursued by Mr William Napier against one Lithgow and Wilkie, upon an inhibition, served by him against his tenant upon a contract, whereby Napier set to his tenant 32 acres of his lands, for payment of four chalders wheat and bear; the Lords found, that the inhibition was a sufficient ground to reduce a wadset given to the tenant of a tenement, albeit there was nothing owing of the tack-duty the time of the alienation.

Fol. Dic. v. 1. *p.* 540. *Haddington, MS. No.* 2619.

No 61.

A party pursued a transference on an old summons, on which inhibition had been used. Transference was refused; yet it was thought, a new summons in the same cause would be sufficient to make the inhibition effectual.

1665. *January* 12. Neilson & Callander *against* ——.

Neilson and Lodovick Callander, her spouse, pursue a transference of an old summons, on which there was an inhibition used. It was *alleged*, That the executions of the first summons were new, and by ocular inspection false, and craved the pursuer might abide thereby, who refused; and so being without an execution on the first summons, but having an execution on the second, were null, the pursuer craved them to be transferred *in statu quo*, but prejudice to the defender in the cause to allege no process, because the first execution was wanting.

The Lords refused to transfer; but some were of opinion, that a new summons, *in eadem causa*, would be sufficient to make the inhibition effectual, being raised on the summons of registration of a bond; others thought, that, albeit the stile bear, that inhibitions were not granted, but upon sight of the summons executed; yet it was ordinary to give it on an unregistered bond, or a charge to enter heir executed, though there was neither decreet nor dependence; and, therefore, though executions be put on to get these raised, yet they are not adhered to, but now used so, that this summons, though without execution, yet might be transferred, and thereon executions might be used, and thereby the inhibition stands valid, which was the more clear way; for, albeit a summons bear to cite to such a day next to come, and so ordinarily cannot be used, no citation being thereon within the year, yet the Lords