

1751. July 3. REIDS and CAMPBELL against GABRIEL NAPIER.

GABRIEL NAPIER writer in Edinburgh, John and Elizabeth Reids, and Campbell of Delnies, had *pari passu* adjudications on the estate of William Mackay merchant in Inverness, and competed on inhibitions.

*Objected* by Mr Napier to an inhibition led by John and Elizabeth Reids, That it proceeded on a dependence which was never closed by a decret ; but the matter being submitted, a decret-arbitral was pronounced ; which was the ground of their adjudication.

*Objected* to Delnies' inhibition, Mr Napier's ground of debt was prior thereto ; he having been employed by the common debtor by missive letters to defend him in his law affairs, and having laid out part of the money before the inhibition ; and though part was laid out after, yet being in virtue of the former mandate, and he having got bond for the whole on this narrative, it ought to be sustained.

*2dly*, The inhibition is null ; the execution narrates the messenger did inhibit William Mackay and his wife, and did deliver a copy to them personally apprehended ; whereas a separate copy ought to have been given to each of them.

*Answered*, The bond granted for Mr Napier's account is affected by the inhibition ; for though he was creditor before for what he had laid out, the debtor was under no special obligation to grant this security ; and for what he laid out afterwards he was not then creditor.

*2dly*, *A* or *an* copy delivered to two persons, signifies in propriety of language, that a separate copy was given to each.

THE LORDS sustained Gabriel Napier's adjudication on the bond granted to him for the sums due to him by account, prior to the inhibition objected ; but found him not entitled, in prejudice of the debt secured by the said inhibition, to any part of the interest or penalty contained in the said bond ; and repelled the objection to the said inhibition ; and found, that the inhibition led by John and Elizabeth Reids, on a dependence, on which no decret followed, had no effect against the competing debt.

Reporter, *Shewalton.* Act. *Lockhart.* Akt. *Haldane.* Clerk, *Justice.*

*Fol. Dic. v. 3. p. 320. D. Falconer, v. 2. No 215. p. 259.*

1751. July 3. SCOT of Thirlestain against The CREDITORS of LANGTON.

THE Creditors of Langton, struck at by an inhibition led by Lockhart of Carnwath, now in the person of William Scot of Thirlestain, objected that it was null ; as bearing only 'because the Lords had seen a horning,' without production of the bond whereon the horning proceeded.

No 57.

An inhibition against a husband and wife, the execution of which bore, that the messenger had inhibited them, by delivering them a copy, was sustained.

An inhibition not sustained, which proceeded on a dependence which was never closed by a judicial decree, but ended by a submission and decree arbitral.

After inhibition, a bond was granted by the debtor for an account contracted partly prior and partly posterior to the inhibition. Found, that the bond was struck at *quoad* the latter part of the account, and as to the whole interest and penalty.

No 58.

Inhibition sustained, which bore only 'because the Lords have seen'

No 58.  
 ' a horning,'  
 without men-  
 tioning that  
 the bond on  
 which the  
 horning pro-  
 ceeded was  
 produced.

*Pleaded* for the pursuer, A horning, which could not have been got without a bond, is evidence of the debt. Inhibitions pass on decreets without their grounds; on summonses; and against heirs on general charges; and there are condescended on from the register 176 inhibitions on simple hornings.

*Pleaded* for the defenders, A horning referring to a bond is no proof of any debt without production of the bond; a decret imports an obligation; inhibitions are granted on dependences, on which decret must follow; and have been allowed on general charges, because it was thought an heir could not be summoned to make a dependence within the year of deliberation; but it is contrary to all rule to grant them on a horning; and the practice, as irregular, ought not to be sustained.

*Observed*, That practice only determined on what foundation this diligence might proceed; as it was difficult to know on what principles this was settled at first.

THE LORDS repelled the objection.

Reporter, *Drummore*.

Act. *A. Pringle*.

Alt. *J. Stewart*.

*Fol. Dic. v. 3. p. 321. D. Falconer, v. 2. No 216. p. 260.*

\* \* See Lord Kilkerran's account of this case in the two last paragraphs of No 55. p. 6989.

1757. *August II.*

No 59.  
 Inhibition re-  
 called upon a  
 debt not yet  
 payable.

WALTER STIRLING, Merchant in Glasgow, *against* PATRICK NISBET, Merchant there.

WILLIAM STIRLING granted bond to Janet his daughter, the wife of Patrick Nisbet, for L. 250, to be paid at the first term after the death of Elizabeth Murdoch.

He afterwards conveyed his whole estate to Walter, his only son, declaring, ' That Walter, and the subjects conveyed to him, should be affected with the payment of his just debts, and the provisions made in favour of Janet and the other children.'

Patrick Nisbet, after the death of William Stirling, used inhibition and arrestments against Walter Stirling, for security of this sum, which was not payable till the death of Elisabeth Murdoch, an event which had not then happened.

Walter applied to the Court to have the inhibition recalled, and the arrestments loosed without caution; and *argued*, That this was a debt not yet due; and therefore that no diligence could be taken out upon it, unless the debtor were *vergens ad inopiam*; which could not be pretended in this case, as Walter's affairs were in a good situation: That of old, the diligence of inhibition was not allowed to go out till probable evidence was given, that the creditor had cause to apply for it; that, in latter times, the diligence had been allowed