

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'