

No 51. conjunctly and severally, to make payment of the damages occasioned by the fault of the whole number; and if certain of the defenders could not have been so pursued, it was impossible to insist against any fewer than the complete number of supposed delinquents.

*Answered* for the pursuers; *imo*, That this defence of no process came too late, after peremptory defences had been given in; and, according to the stated practice of the Court, could not now be taken up; *2do*, That the pursuers only insisted against the defenders severally for their respective proportions of the money drawn from the Collector, and did not contend, that any one was liable for the whole; and therefore that the action was competent against each of them, without calling the rest.

“THE LORDS sustained process against such as were called, without prejudice to the pursuers afterwards calling the rest; but appointed the libel to be amended, and the word conjunctly to be struck out.”

Reporter, *Auchinleck.* Act. *Montgomery.* Alt. *Sir David Dalrymple.*

N. B. It was afterwards found, That the money was properly expended; and the defenders were assolizied.

*W. J.*

*Fol. Dic. v. 4. p. 148. Fac. Col. No 15. p. 25.*

1758. July 22.

ANNE ROSS and WILLIAM WALLACE Writer *against* THOMAS CLEGHORN and the Incorporation of TAILORS of PORTSBURGH.

No 52.

A summons, by being called in the Outer-House by the clerk, becomes a depending process.

ANNE ROSS raised a summons for payment of a debt against Lady Earlshall, which was executed upon the 2d of August 1721. This summons, after the days of compearance were elapsed, was called in the Outer House in the usual form by the clerk, and the calling marked on the margin thus: “3d February 1722, Actor, Irving, Alter. Boswel. To see.”

Anne Ross raised inhibition on this summons, in order to attach the lands of King’s Stables, then the property of Lady Earlshall, which was executed on the 22d August 1721, and recorded the 7th September thereafter.

This summons was neglected for 24 years; after which Anne Ross and William Wallace her assignee, raised a wakening and transference against the Lady Earlshall’s three daughters, and added a conclusion of reduction *ex capite inhibitionis* of a disposition of the lands of King’s Stables, by Lady Earlshall to David Bruce-Bailie, in 1724, and the service of Robert Bailie, as heir to him, in 1725, with infeftments, and other writs following thereon. Before this time Robert Bailie had sold the lands to Thomas Cleghorn and the Incorporation of Tailors.

Anne Ross obtained a decret *cognitionis causa*, the three daughters having renounced, and afterwards an adjudication of the lands of King's Stables, for payment of her debt, and insisted in a process of mails and duties, in which Thomas Cleghorn and the Incorporation of Tailors of Portsburgh, purchasers by progress from Lady Earlshall, appeared, and pleaded a preference on their prior infeftments.

Anne Ross *replied*, That the inhibition executed upon her depending process in August 1721 was prior to the defender's rights, and therefore a sufficient ground for reducing them.

*Objected* for the defender, to the pursuer's inhibition, That the summons on which the inhibition was raised had expired by the elapse of year and day without any judicial proceedings or debate following upon it; and if the summons expired, the inhibition must fall with it; as was found in the year 1743, James Robertson brewer in Edinburgh against Mr Alexander Macmillan. See APPENDIX.

*Answered*; The summons, by being called in the Outer-House by the clerk, became a judicial proceeding and a depending process; for anciently the first calling of summonses in the Outer-House was in presence of a judge, as is the practice still in the inferior courts; and though in fact the judge is not now present at these callings, yet his presence is presumed; and this is to be considered as the first judicial step upon every summons, and is agreeable to the authority of Lord Stair, B. 4. Tit. 2. § 3, and the obvious construction of the act of sederunt 26th February 1718.

“THE LORDS found, that the summons, by being called in the Outer-House, became a judicial proceeding, and could be afterwards wakened and insisted in; and therefore repelled the objection.”

*Act. Garden.*

*Alt. Ferguson.*

*W. J.*

*Fol. Dic. v. 4. p. 146. Fac. Col. No 128. p. 236.*

1761. March 5.

JOHN WATSON of Muirhouse, and other Creditors-Adjudgers of James and William Craig, Andrew Scott, and Richard Stark, Merchants in Glasgow, *ex parte*.

In 1740 John Watson of Muirhouse obtained adjudication of several tenements in Glasgow belonging to four different persons, viz. James Craig, William Craig, Andrew Scott, and Richard Stark, for payment of the accumulated sum of L. 510 : 6s. Sterling, arising from their joint bond.

This adjudication was soon followed by many others, some of which were led against the whole persons above named, some against three of them only.

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No 53.

If competent to prosecute a ranking and sale of the estates of several bankrupts in one process, and upon one libel?