

as if he had been better horsed, or more people with him, or that being in the fields the Bailie was alone, or such like other considerable circumstances, that the LORDS would, at the advising of the cause and oath, have regard thereto, and consider if the defender had probability of excuse for not taking the rebel.

No 94.

Act. Belsbes.

Alt. ———.

Clerk, Scot.

Fol. Dic. v. 1. p. 265. Durie, p. 397.

1670. February 12. NAPIER against GORDON of Grange.

JOHN NAPIER, as representing his father, did pursue William Gordon of Grange, as representing Hugh his father, for payment of 2000 merks, due by the said umquhile Hugh's bond; and upon the said William's renouncing to be heir, obtained adjudication of the lands of Grange and others, in so far as might belong to the said umquhile Hugh's debtor's heirs, and thereupon did pursue the tenants for mails and duties; in which action, it was *alleged* for William Gordon, now of Grange, That he stands infest by a disposition from the said umquhile Hugh Gordon of Grange, his father, for onerous causes and sums of money undertaken, and paid for his father, which was found relevant; and to evite the same, the said John Napier raised reduction of Grange's right, granted by his father, *ex capite inhibitionis*, raised against his father upon the said bond, before the disposition made to this Grange; which inhibition being produced this day fortnight, it was *alleged* for Grange that the same was null, because the executions bore not a copy to have been left at the market cross, at the publication of the inhibition, which the LORDS found relevant; and now the pursuer *insisted* on this reason, That the disposition, though it bore onerous causes, yet being after the contracting of his debt, by a father to a son, the narrative bearing the cause thereof, is not probative against a third party, but the same must yet be instructed.

No 95.
An inhibition found null, because the executions of it bore not that a copy was left at the market cross.

Which the LORDS sustained, and ordained Grange to produce the instructions thereof. See PROOF.

Fol. Dic. v. 1. p. 265. Stair, v. 1. p. 671.

1674. February 11. M'CULLOCH against GORDON.

No 96.

A CHARGE of horning being given at the debtor's dwelling-house, he not being personally apprehended, it was found a nullity, that the messenger or witnesses did take away the copy of the charge to conceal it from the debtor, without necessity to allege that they were instructed so to do.

Fol. Dic. v. 1. p. 265. Stair.

* * * See This case, No 29. p. 3701.