

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?

No 53.

The debts due by those persons exceeding the value of their subjects, a process of ranking and sale was brought by Mr Watson of Muirhouse in 1746.

The ranking being brought to a conclusion, the decret was extracted; but when the proof in the sale came to be advised, a doubt arose, how far the estates of four different debtors could be brought to sale by one summons; and upon this point the creditors were appointed to give in a memorial.

This order was complied with; and it was *pleaded* for the Creditors, *1mo*, The question is not now entire, in respect that, so early as January 1747, when a dispute arose, how far some of the subjects contained in the summons could be brought to a sale, the Court gave judgment, that, as to these, the sale could not proceed; but, at the same time, sustained the process as to the whole other subjects libelled; *2do*, Although an *accumulatio actionum* in the same summons is not allowed where the ground of action against two or more persons is different, yet where it is one and the same, there is no necessity for a separate summons against each. Thus, where two or more grant a joint obligation, the creditors can insist against the whole in one summons; and as, in such cases, warrants issue for letters of horning, poinding, inhibition, &c. against the whole co-obligants, so it never was doubted, that the whole could be contained in the same letters, and that execution could, upon these letters, proceed against all their persons. This being the case in personal actions and in personal diligence, the same rule must take place in those actions by which real estates are attached. When, therefore, two or more are jointly bound for any debt, it must be competent to the creditor to adjudge the estates of the whole co-obligants by one and the same decret; and from thence it must necessarily follow, that such creditor can likewise prosecute any action that may be judged necessary for carrying his adjudication into farther execution: It would be competent to him to bring an action of mails and duties against the possessors of the different estates adjudged; nor would it be any objection, that these different estates were contained in one summons; and if that be so, there occurs no good reason why he should not be allowed to comprehend the whole in one summons of sale, upon finding that he cannot recover his payment out of the rents and profits in virtue of his decret of mails and duties; *3tio*, This question was determined in the year 1747, in the process of sale of the estates of Funart and Tillichintaul, where the Court allowed lands belonging to two different persons who had granted a joint bill to be brought to a sale, although contained both in one summons.

“ THE LORDS found the action competent.”

For the Creditors, *Macquhen*.

*A. W.*

*Fol. Dic. v. 4. p. 148. Fac. Col. No. 29. p. 57.*