

1770. *February 16.* MRS AGNES STEWART of Phisgill *against* The EARL of GALLOWAY and OTHERS.

INHIBITION.—ARBITRATION.

Effects of a submission and decret-arbitral upon an inhibition raised upon the dependance of the actions submitted, but in which no notice was taken of the inhibition.

[*Faculty Collection, V. p. 55; Dict. 7004.*]

MONBODDO. Our law has the remedy of inhibition, both upon claims liquid and illiquid. When liquid, upon decret; when illiquid, upon dependance. Here the claim was liquid upon decret-arbitral. The creditors are not affected by the decret-arbitral. Mrs Agnes Stewart might have insisted on her original grounds of debt, and restricted herself to the decret-arbitral. The creditors, if they had no objection to the decret arbitral, could have no reason for complaining. There is only one decision of the Court to the contrary: *June 1751, Gabriel Napier*. And one decision does not move me.

COALSTON. I incline to be of the opinion given by the Court in *Gabriel Napier's* case. The law of this country allows arrestment and inhibition on a dependance. The only purpose is to secure what may be found due upon the dependance. In all suspensions, a few excepted, caution is found; but that only relates to what is determined by the Court. If parties transact, the caution flies off. The interlocutor of the Ordinary goes too far in finding the action sopite. The parties may still waken their process, and insist for their preference, to the extent of the decret-arbitral.

JUSTICE-CLERK. Of the same opinion. Mrs Agnes Stewart cannot go into the multiplepointing and claim a preference there; but she may go into her own process, and restrict her debt; and upon that restriction take decret, with security of inhibition.

On the 16th February 1770, The Lords “found the sum awarded by the decret-arbitral not secured by the inhibition, but without prejudice to waken and insist in the former process, and there to claim preference upon the inhibition, as accords:” varying Lord Auchinleck’s interlocutor.

*Act. A. Lockhart. Alt. R. M'Queen.*