

No 52.

*Replied to the first*; An exception by an agent against exhibition does not prescribe, so long as the writs are in his custody. And to the *second*, it was *answered*, That a right of property, and that of an hypothec, are, in their nature, quite different; the proprietor suffers nothing by exhibiting the writs, if he gets them safely returned; but a writer, who has the custody thereof for security of his accounts, would be precluded from any benefit arising from his hypothec, if he were obliged to exhibit them even *ad modum probationis*; more especially, that, if the pursuer prevail in the process of recognition, there will no subject remain for payment of any of Lord Duffus's creditors.

THE LORDS found, that the Earl had a title to have the writs exhibited to him, without being obliged to pay Mr Coupar's account.

*Fol. Dic. v. 1. p. 419. C. Home, No 82. p. 135.*

1742. *January 29.* SIR ROBERT STEWART, and Others, Petitioners.

No 53.

If a writer or agent be obliged to allow inspection of writings, on which he has a hypothec?

It was reasoned among the Lords, whether or not an agent or writer, who had an hypothec on writs in his hands, was obliged to allow inspection till his account was paid? It was on the one hand said, that all the party wanted, was inspection, whereby the hypothec would be eluded; on the other hand, should a writer be allowed to say, 'I have papers, but I will not shew them till I am paid;' he might draw his account for shewing papers that might be no better than a pack of cards. *2do*, Why should a writer, on account of his hypothec, have a stronger right than a proprietor has in his own papers, who yet is obliged to exhibit *ad modum probationis*?

The point did not in this case receive a direct determination; but it seemed to be the opinion of the majority, that inspection was to be allowed.

*N. B.* It is remembered, that in a declarator of recognition, the writs of the lands being called for by a diligence, to shew that they held ward of the pursuer, the defender's writer, in whose hands they were, was found obliged to exhibit them, notwithstanding his hypothec, which could not bar the third party's interest, to have them produced *ad modum probationis*, January 31. 1738, Earl of Sutherland *contra* Mr David Coupar, No 52. p. 6427.

*Kilkerran, (HYPOTHEC.) No 2. p. 272.*

No 54.

A writer may detain his client's papers for his account, but not for money advanced for him.

1749. *July 5.* THE CREDITORS OF LIDDERDALE *against* NASMYTH.

IN the ranking of the Creditors of James Lidderdale of Torrs, James Nasmyth writer, called upon a diligence at the instance of the Creditors to exhibit the common debtor's rights to his estate, produced an inventory of the writs called for; but insisted that he was not bound to deliver them till he was paid of an