

* * * Auchinleck reports the same case :

No 5.

SUMMONS of diligence execute against persons out of the country, at the market-cross of Edinburgh, pier and shore of Leith, upon 60 days, not sustained, because the summons bore no warrant; but the LORDS gave the party a long day to conclude his diligence.

Auchinleck, MS. p. 220.

1666. June 29. DOUGAL M'PHERSON against Sir RORY M'LAUD.

No 6.

DOUGAL M'PHERSON pursues Sir Rory M'Laud for payment of a sum upon his promise, and the summons bears a warrant to cite him at the market-cross nearest the place of his residence, being in the Isles; whereupon the pursuer craved him to be holden as confest. The defender *alleged*, That he was not personally apprehended, and so could not be holden as confest; and, that this citation at the market-cross was *periculo petentis*, and not to be sustained in the time of peace, when there was no trouble in the country.

A warrant to cite at the nearest market cross, where there is no *tutus accessus* to the party, must be granted by the Lords *in presentia* upon a special bill.

THE LORDS found that warrants for such citations ought not to be granted by common bills of course, but only by the Lords, upon special bills *in presentia*, but seeing the defender compeared, they allowed his procurator a long time to produce him.

Fol. Dic. v. I. p. 258. Stair, v. I. p. 383.

1672. June 21. FERGISSON against ———.

No 7.

THE LORDS found, That a party being within the country, the time of the citation upon the first summons, and some time thereafter; and, going out of the country before the second summons, could not be cited at the pier and shore of Leith upon the second summons, without a warrant in the said summons to that effect.

Fol. Dic. v. I. p. 259. Dirleton, No 170. p. 69.

1677. July 18. MONTEITH against MURRAY.

No 8.

GEORGE MONTEITH being creditor to Hector M'Kenzie, arrested in the hands of Thomas Dewar skipper, the said Hector's share of the ship called the Golden Crown, and profits thereof, which ship was disposed to the said skipper, and he

An execution at the market cross of Edinburgh and