

No 43.

ought to have intimated to his agent, or the writer of the bill, the name of the cautioner offered.

THE LORDS found the clerk liable, in respect of the instrument being attested by the witnesses' oaths, seeing he did make no intimation to the suspender, or the writer of the bill, of the name of the cautioner; but in case the instrument was not approved, the LORDS declared they would hear the general case in their own presence, how far the clerk of the bills is liable for the sufficiency of cautioners, or what diligence he ought to do for finding the same. See PUBLIC OFFICER.

*Stair, v. 2. p. 810.*

1680. December 10.

No 44.

GEORGE DRUMMOND, Merchant, *against* JAMES DUNBAR, Messenger.

THE LORDS sustained a libel relevant against him, for paying a debt, for malversing, in giving a declaration to the Privy Council that the Laird of Dundas was only incarcerated upon one caption, whereas he was likewise imprisoned by him on the pursuer's caption, by which concealment he was put at liberty.

1681. July 6.—GEORGE DRUMMOND late Bailie in Edinburgh against James Dunbar messenger, anent his arresting the Laird of Dundas; the LORDS found where one is imprisoned for a riot by order of the Privy Council, and is arrested in prison by virtue of a caption for a civil debt, if the Privy Council release him, he cannot be detained on pretence of the arrestment, because it falls by consequence, the first cause of imprisonment on which it depends, being relaxed. Yea Halton, (who stood very high in this cause for the Privy Council's jurisdiction,) and some others, went this length; that though the first cause of imprisonment had been on a caption for debt, and the second only by the Council, yet he might be liberated by the Council's order; which seems most arbitrary and unjust.

*Fol. Dic. v. 2. p. 342. Fountainhall, MS. & v. 1. p. 146.*

No 45.

Where an inhibition had been marked as registered, but not in fact booked, the clerk and his representative held to be liable for damage and loss thence accruing.

1696. January 3.

SCOTS *against* JOHN GRIEVE.

SCOTS, younger children of Tushilaw, pursue a reduction *ex capite inhibitionis*, served upon their bond of provision against Mr John Grieve of Pinackle, and Michael Anderson, who had purchased the lands after their inhibition was executed. *Alleged*, The inhibition is null, not being duly registrated within 40 days, conform to the act of Parliament 1617; in so far as, though it be marked as duly registrated, and recorded by the clerk and keeper of the shire's Register at Selkirk; yet, upon search, there is no such inhibition standing