

1702. February 12. DURHAM of LARGO *against* MERCERS and the EARL of LEVEN.

IN a competition between Durham of Largo, and Mercers, and the Earl of Leven, their assignee, all creditors to Young of Kirkton; Largo having founded on two inhibitions, it was objected against the [execution of the] first, that it was null, because it neither designed the inhibitor nor the person inhibited, but only related to the letters, and bore "the within designed." *2do*. The execution against the lieges at the market-cross does not bear the letters to have been read after open proclamation.

Against the *second* inhibition it was OBJECTED,---That it only bore the general terms, to have inhibit them, to the effect and with certification within written, but wants the special prohibitory words,---to sell, annailye, wadset, or contract debts.

ANSWERED to the *first*,---The Act of Parliament 1672 appoints the designation of parties in executions of summonses; but there is no law nor custom requiring it in diligences. Next, The execution bears open and public reading of the letters and three oyesses, which is the same thing with proclamation; and though want of solemnities may annul inhibitions as an unfavourable diligence, stopping commerce, yet they must not be cast up for omission of nicety, where they have the equivalent.

As to the objection against the *second* inhibition, ANSWERED,---That the execution bears, he discharged all the lieges with certification, conform to the command of the letters in all points, and affixed a copy; and executions of hornings only bear the party to be charged for the causes and to the effect within specified, and yet none will call such a charge of horning null.

Some thought the style was to be followed *in terminis specificis*, without any mitigation or dispensation by equipollents. Others inclined to sustain the inhibitions, who had the Lord Stair of their opinion, *Book 4. tit. 50*: But, at last, the Lords, before answer, resolved to try the custom by inspecting the registers.
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1702. February 17. WILLIAM DOUGLAS *against* BAILIE TELFER'S HEIRS, WILLIAM FULTON, and MARGARET ALCORN.

THE Lord Arbruchel reported William Douglas, chamberlain to the Earl of Roxburgh, against the heirs of Bailie Telfer, William Fulton, their tutor, and Margaret Alcorn. John Telfer having granted bond for £800 to Janet Potts, relict of Thomas Alcorn, she grants him a receipt and obligation of the same date, declaring she had borrowed up the papers assigned by her to him, and obliged herself to make an assignation thereof to Margaret Alcorn her daughter, and to cause her transfer the same to the said Bailie Telfer. Douglas being a creditor to Janet Potts, he arrests the £800 in Telfer's representatives' hands; and pursuing a forthcoming, they ALLEGE,---That Telfer's bond was but *surrogatum* in place of what Janet was to assign of Lanton and Cockburn's bond; and Janet having given a back-bond of the same date, and before the