

No 199. ther his honour, life, or estate, upon a messenger's deed, at which he was not present. THE LORDS, on Rankeilor's report, found Sir George not liable to abide by the execution any farther than he had made use of it, which was only against Graham; without prejudice of their forcing him to abide by its verity, *simpliciter*, when he insisted against the rest contained in that execution.

*Fol. Dic. v. 1. p. 454. Fountainball, v. 2. p. 198.*

1706. February 1.

No 200.

SIR WILLIAM MAXWELL of Monreith *against* GEORGE IRVINE of Stank.

IN an action at the instance of Sir William Maxwell against Irvine of Stank, the pursuer having offered to improve a discharge produced by the defender; the LORDS ordained the defender to abide by the same *simpliciter*, and would not allow him to adject to his abiding by, this quality, that he abides by the discharge as a true writ and deed except as to the designation of the writer.

*Fol. Dic. v. 1. p. 454. Forbes, p. 89.*

1708. June 25.

No 201.

In a competition, between adjudgers for mails and duties, the one suffered the term for improving a discharge to be circumduced against the other. The common debtor, notwithstanding, found entitled to appear and abide by it.

WILLIAM COUPLAND of Collistoun *against* WILLIAM CARRUTHERS Chirurgion.

IN a competition for the mails and duties of Brakenwhat, betwixt William Coupland and William Carruthers adjudgers thereof, the latter craved preference upon this ground, That the debt for which Coupland had adjudged was satisfied in whole or in part, before the leading of his adjudication. Carruthers, for proving thereof, recovered by a diligence a discharge of the debt, which Coupland offered to improve, and Carruthers was ordained to abide by *sub periculo falsi*; after Carruthers had suffered the term to be circumduced against him, for not abiding by, the LORDS admitted James Carlyle of Brakenwhat compearing for his interest, and proponing payment upon the discharge, to abide by the verity thereof, and ordained Coupland to consign his L. 40, in respect no collusion betwixt Carruthers and Coupland could prejudice or debar James Carlyle from extinguishing his creditor's debt, and abiding by the verity of the instruction thereof; albeit it was *alleged* for Coupland, That in all improbations the user of the writ must abide by it, June 16. 1675, Lady Logie *contra* Meldrum, No 179. p. 6756., since otherwise the effect of an improbation might easily be elided by shifting suspected writs from hand to hand; besides, James Carlyle is an insolvent person.

*Fol. Dic. v. 1. p. 455. Forbes, p. 255.*

1712. November 21.

No 202.

Defenders in an action having pro-

COLIN MACKENZIE of Rosend *against* The INHABITANTS of BURNTISLAND.

IN the action of abstracted multures at the instance of Colin Mackenzie and his authors, against the Inhabitants of Burntisland, the defenders having proponed improbation, against the execution of the summons, and consigned L. 40,