

No 78.

inhibition would subsist as good for all that should be found due on the event of the count. It occurred to some of the Lords, that the defender (though a singular successor) stating himself now as the contradictor, should enact himself to pay the balance *in eventu*; but the plurality thought it sufficient damage to him that his right would be reduced, and laid open by the inhibition *in quantum* the bond subsisted, and was not diminished by the defalcations and instructions of the count, especially in the case of such alternative conditional bonds.

*Fol. Dic. v. 1. p. 541. Fountainball, v. 1. p. 683.*

1698. December 27. MILNE and HAMILTON *against* COCKBURN.

No 79.

A summons had remained blank for a considerable time after inhibition had been raised on the dependence. The inhibition reduced.

SIR ROBERT MILNE and Sir George Hamilton raise a reduction against Sir James Cockburn of that ilk, of an inhibition served by him against Sir Robert in 1690, on a depending process for a great sum of money. The reasons were, *imo*, That this could not be called a depending process, because it slept for many years, till a new wakening of it was raised. *2do*, The summons produced was not the ground of it, but another summons abstracted, which was only executed for the first diet. *3tio*, The summons was wholly blank as to the subsumption and debt, and lately filled up. *Answered* to the *1st*, That a summons not insisted on, but afterwards wakened, is still a depending process, and cannot be reputed dead, no more than a man asleep can be called so. To the *2d*, It is denied: And as to the *3d*, The constant practice of the writers to the signet has been to raise inhibitions on blank summonses and charges to enter heir; and whatever may be done for the future, such cannot be quarrelled for by-gones, *quia error communis facit jus*, so as to excuse and sustain them till the custom be altered, as has been often found in other cases. THE LORDS took trial before answer as to the matter, and, by examining witnesses, it appearing to have been blank many years after the inhibition, and the summonses only of late to have been filled up, they reduced the inhibition as wanting a sufficient warrant; but, to advertise the lieges of their hazard, they resolved to make an act of sederunt, that the inhibitions served on dependencies shall ingross the tenor of the summons, else they shall not be sustained.

*Fol. Dic. v. 1. p. 541. Fountainball, v. 2. p. 29.*

1713. July 17.

WEIR *against* DEUCHAR.

No 80.

AN inhibition upon a conditional debt was discharged by the Lords, in respect there was no present just reason for inhibiting.

*Fol. Dic. v. 1. p. 542. Forbes.*

\* \* This case is No 76. p. 7016. *voce* INHIBITION.