

No 109.  
no decret  
can go out  
till the prin-  
cipal debtor  
be summon-  
ed, and the  
days of the  
summons run.

the debt was referred to John Inglis's oath, whom he could not hinder to depone upon his conscience what he pleased ;—THE LORDS found no process, because the principal debtor was not summoned to this diet, as he ought to be to all the diets of the process, (he not compearing therein) ; but the LORDS ordained, in the mean time, John Inglis his oath to be taken, seeing the pursuer had no other probation of the debt, owing by John Inglis to the Lieutenant-Colonel, but his oath ; and if the said John Inglis die before the Lieutenant-Colonel, who is not within this realm, could be summoned, it were inquiry that the pursuer should be prejudged in his probation ; therefore ordained his oath to be taken, as said is, and to be retained and kept, to be extant while the event of the process.

Act. Johnston.

Alt. Gilmore.

Clerk, Hay.

Fol. Dic. v. 1. p. 141. Durie, p. 839.

1665. January 31.

The LORD BORTHWICK against ANDREW and MR MARK KERRS.

No 110.

In a reduction *ex capite inhibitionis*, there was found no process till the person inhibited were called, the defender's author, and who was bound to him in warrandice.  
See No 107.

THE Lord Borthwick pursues a reduction *ex capite inhibitionis* against Andrew and Mark Kerrs of a disposition made by Sir Mark Kerr of Mauldslic, upon this reason, that Sir Mark was inhibited at the Lady Borthwick her instance, before the granting of the said disposition, whereunto and grounds thereof, the Lord Borthwick was made assignee. THE LORDS found no process, because the representatives of Sir Mark, viz. the Countess of Lothian and her sister, were not called, as they ought to have been, in this process ; and albeit, they were called in a summons of transferring of the same process, yet that was not found sufficient, not being called in this.

Fol. Dic. v. 1. p. 141. Newbyth, MS. p. 24.

\* \* Stair reports the same case :

THE Lord Bothwick pursues a reduction, *ex capite inhibitionis*, of all rights made by Sir Mark Kerr, to Andrew or Mr Mark Kerr of Moristoun, of certain lands. The defenders *alleged* no process, because none to represent Sir Mark Kerr were called, who being bound in warrandice to the defenders, ought to be called ; whereas, of old, processes sisted till warrants were first discussed ; so now the warrant ought at least to be called. The pursuer *answered*, That he was not craving reduction of Sir Mark's own right, but of Moristoun's right, granted by Sir Mark, who was common author to both. And as to the warrandice, the defender might intimate the plea if he pleased.

THE LORDS found no process till the warrant were called.

Fol. Dic. v. 1. p. 141. Stair, v. 1. p. 259.