

1714. *November 26.*The CREDITORS of THOMSON *against* The CREDITORS of ROSS of Wairdhouse.

IN the competition of the Creditors of Ross of Wairdhouse, the LORDS found, that an inhibition upon a dependence at the instance of William Moir, conveyed by progress to the Creditors of William Thomson was null, because raised before the summons on which it was founded was executed; for the same reason that they also found an arrestment upon a dependence null the 19th July 1706, in a competition of the Creditors of Strichen, No 51. p. 8144.; in the said case of the arrestment it did appear, that the letters of arrestment were executed before any execution on the principal summons, whereas in the present case, the inhibition was raised two days after the summons, and both executed the same day; which the Lords did not respect as any reason to vary the decision in this case from the former, because the nullity respects not the execution, but only the letters of inhibition or arrestment, which letters proceed upon a bill, and the bill relates to a process depending; and the deliverance runs in these terms, 'because the Lords have seen the dependence,' a summons unexecuted is no dependence, and the bill which is the warrant of the letters passing of course *periculo petentis* is null when there is no dependence.

Fol. Dic. v. 1. p. 541. Dalrymple, No 119. p. 166.

* * Bruce's report of this case, is No 39. p. 6968, *voce* INHIBITION.

1726. *December.*FERGUSON *against* WILSON.

IN a competition, it was *objected* against an inhibition, that the summonses were not executed when the inhibition was raised, and therefore the inhibition was null, not having been taken out upon a dependence, seeing to make a depending process, it is necessary that the summons be executed. *Answered,* The inhibition was not executed till after the summonses were executed. *Replied,* The very letters of inhibition presuppose an executed summons and dependence without which they cannot be warrantably taken out, which is clear from these words of the letters, 'as the summons duly executed bears,' and from the deliverance on the bill of inhibition, signed by the Lord Ordinary on the bills, viz. 'because the Lords have seen the dependence.' THE LORDS sustained the objection.

Fol. Dic. v. 1. p. 541.

No 81.

An inhibition on a dependence found null, because raised before the summons on which it was founded was executed.

No 82.