

1680. *December 8.* ———— *against* The LORD CARDROSS.

IN a pursuit at the instance of ———— against the Lord Cardross,—it was ALLEGED, No process; because the second summons was at the pier of Leith; whereas Cardross was then within the kingdom, and so should have been cited personally, or at his dwelling-house.

It was ANSWERED, That the first citation being at the pier of Leith, Cardross being then out of the kingdom, the pursuer was warranted to proceed so with the second summons; especially seeing Cardross was accustomed to be about the border, and to go in and out, and to lurk there.

The Lords found, No process till Cardross were cited personally, or at his dwelling-house; being then within the kingdom, albeit the first citation was given when he was out of the kingdom.

*Vol. II, Page 812.*

1680. *December 10.* MR EDWARD WRIGHT *against* EDWARD RUTHVEN.

MR Edward Wright, advocate, having right to the escheat of Ruthven of Gairn, pursues a declarator against Edward Ruthven, upon whom the estate of his grand-father, General Ruthven, Earl of Bramford, was settled by Act of Parliament; to declare that estate affectable with 10,000 merks, for which Gairn procured a bill from Robert Murray upon Francis Kinloch, to be paid to Bramford *in anno* 1646; and, for instructing thereof, produced Bramford's letter to Gairn, to raise that money out of Bramford's estate, or otherwise, upon his own or his other brother's credit; and upon several missives acknowledging the receipt of the like sum from Francis Kinloch, he being a factor at Paris.

The defender ALLEGED, No process, upon these missive letters, to infer so great a sum, they wanting witnesses. *2do.* Nothing is produced to instruct that the sum was furnished out of Gairn's proper money. *3tio.* The letters can infer no obligation, unless the bill of exchange, or a bond for the sum, were produced; for the law presumes these satisfied and cancelled, unless they can be produced. Nor can it be supposed that Gairn would have advanced so considerable a sum, without ordering Francis Kinloch to take Bramford's bond, or his receipt upon the bill ordering Francis to pay him the sum; and there being nothing more ordinary than to pay upon retiring bonds or bills, without discharge or missives relating to such bonds or bills, which are never sustained to infer debt without producing the bonds or bills themselves. For the most cautious cannot remember what letters they might have written relating to debts due by them, and desiring forbearance of principal or annual: which, if they did infer debt, albeit the bonds were satisfied and cancelled, they would necessitate the debtor to prove payment by writ; which were impossible.

The Lords found, That these letters were not relevant to prove a debt, without production of a bond or bill of exchange bearing Bramford's receipt of the money.

*Vol. II, Page 812.*