

quarrelled, because it was not the principal comprising, authorised with the seal of the comprisers, and subscription of the Judge; neither was it warranted as a transumpt, decerned to be doubled by a sentence of a Judge, but was only extracted by the clerk to that comprising, whose extract ought not to have faith, that being no ordinary nor public judgment; and the clerk being but a private person, after the comprising was ended, he could not, at his own hand, without a greater warrant from a sovereign Judge, effectually copy or extract the same, to produce action thereon, as an authentic writ. This allegiance was repelled, and the comprising so extracted sustained, as sufficient to produce action.

No 432.
given by the clerk thereto, was found a sufficient active title.

Act. *Stuart.*

Alt. ———.

Clerk, *Hay.*

Fol. Dic. v. 2. p. 250. Durie, p. 311.

1629. *March 26.*

DUFF against BOYD and WILSON.

Two creditors contending, which of them should be found to have best right to a sum of money arrested, as pertaining to their common debtor; the one claiming the same by virtue of an arrestment laid upon that sum, before the other party's diligence; and the other party alleging, that that arrestment ought not to be respected, because the principal letters, which should be the warrant to all arrestments, were not produced, seeing there was nothing produced but an extract of the letters of horning out of the Clerk of Register's books, wherein the horning was registered; in the which extract, there was contained a warrant to arrest, and, by virtue of the warrant in the extract, the arrestment was made by the officer, since the letters of horning were registered; and which extract, he alleged, could not be a warrant to any officer, or to any party, whereupon to make arrestment, except the principal letters, bearing that warrant, themselves were shewn.—THE LORDS found the foresaid extract, albeit purporting a warrant of arrestment, could not be a warrant whereby arrestment could be executed, the principal letters themselves not being shewn; which principal letters, signed and signeted, could only be a ground of arrestment; and, therefore, the said arrestment was not sustained; but the other party was preferred.

No 433.
An extract found not sufficient for a warrant of arrestment.

Act. *Davidson.*

Alt. *Boyd.*

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 250. Durie, p. 442.

* * * Spottiswood reports this case :

STEVEN BOYD and one WILSON, two of Andrew Kellie's creditors. were striving about L. 400, pertaining to Andrew, which of them should be preferred: They had both arrested; but Steven Boyd having lost his principal letters of

No 433. arrestment, produced only an extract of letters of horning and arrestment, with the principal executions of the arrestment, subscribed by the messenger.—THE LORDS found, that, albeit the extract would suffice for the horning, yet it was not enough to verify the arrestment.

Spottiswood, (ARRESTMENT.) p. 18.

1682. *January.*

WILLIAMSON *against* THREAPLAND.

No 434.
An extract of an inhibition out of the record sufficient to found a reduction *ex capite inhibitionis*; reserving to the defender to pursue improbation.

JOHN WILLIAMSON, Sheriff-clerk of Perth, being assigned by Agnes Lamb, relict of James Dycks, to a bond of 2700 merks, granted by Patrick Anderson of Tulliallan to her and her husband in liferent, and the children in fee, whereupon there had been an inhibition served, pursues a reduction against Sir Patrick Threapland of the right made by Anderson to him of certain lands, *ex capite inhibitionis*. *Alleged* for the defender, That there could be no process upon the inhibition, because, it was only an extract under the pursuer's own hand, which could not make faith for him, unless the principal were produced; as also, albeit it were produced, yet it could not be a ground of reduction of the defender's right; because, albeit the pursuer be assigned to the debt, yet he is not expressly assigned to the inhibition. *Answered*, That the extract under the pursuer's own hand was sufficient, he having extracted the same *ex officio*, as being Clerk; and if he has taken out a wrong extract, he is liable for malversation. And farther to instruct that it is a true extract, there is another extract produced, under the Clerk-depute's hand; and albeit the pursuer be not assigned to it *per expressum*, yet he being assigned to the debt, and to the bond, and to all right, title, and interest, that the cedent had, it will carry a right to the inhibition, and all legal diligence that has followed upon the bond, as being accessory thereto.—THE LORDS sustained the pursuer's title, although his assignation was only to the liferent, and did neither assign the inhibition *per expressum*, nor contained these general words, with all that has followed thereupon: And found the extract of the inhibition out of the books of the sheriffdom of Perth, under the hand of the pursuer's own depute, to be sufficient in the action of reduction; reserving improbation to the defender, as accords.

Fol. Dic. v. 2. p. 250. Sir P. Home, MS. v. 1. No 80.

1693. *February 21.* WALLACE *against* EARL OF DUNDONALD.

No 435.

WALLACE of Neilstownside against the Earl of Dundonald, and the Tenants of Glen.—THE LORDS having read the act of Parliament in 1617, they found an extract, out of the Register of Reversions, is declared to make as much faith, (except in the case of improbation and falsehood,) as out of the Register.