

1672. February 6. BAILLIE HALL *against* ANDREW SPREUL.

IN a reduction of a disposition made by one Baillie to the said Spreul, at the instance of Baillie Hall and his co-partners, *ex capite inhibitionis*, it was *answered*, That the inhibition was served upon a dependence ; and albeit decret followed thereupon against Baillie, the common debtor, yet the decret was null, and did not constitute Baillie debtor in any liquid sum ; in so far as the libel, being for the price of merchant goods, and for damage and interest, there was nothing proved ; and the decret was pronounced without any probation whatever.—It was *replied*, That the decret was opposed, bearing that the price of the goods and the value of the damage were particularly libelled ; but the defender proponing a peremptory defence, without denying the quantities or prices libelled, did thereby liberate the pursuer from probation ; and the term being circumduced against him for not proving the defence, the decret was valid, and the inhibition served upon the dependence.

THE LORDS did sustain the reduction, notwithstanding of the answers made to the reasons ; and found, that there was no necessity to the pursuer to prove the quantity and prices libelled, seeing the defender did noways deny the same, when he proponed his peremptory defence ; but if the prices were exorbitant which were libelled, they reserved to the defender to intent action for modification thereof to the true avail.

*Fol. Dic. v. 2. p. 187. Gosford, MS. No 465. p. 241.*

1674. July 23. JAMISON *against* HAY.

DOCTOR HAY having apprised the lands of Artrochie from Patrick Con for L. 1000, which his father paid as cautioner for Con, he thereupon raised improbation and reduction against George Stuart, who before had apprised the same lands for payment of a bond of L. 500, and a bond of 100 merks ; and against Marjory Jamison, who now had right by progress to that apprising ; who having compeared, took terms to produce, and at last obtained decret of certification against the two bonds foresaid, and thereupon did reduce George Stuart's apprising, as being without warrant, and all that followed thereupon. The said Marjory Jamison hath now raised improbation and reduction of the Doctor's decret, and insists, in the first place, for improbation of the executions of the citation alleged, given against her, to have compeared in that decret, to the effect that the whole decret might fall in consequence. The defender *alleged*, Absolvitor ; because the said Marjory did compear in the Doctor's decret, and took terms to produce, and so *suscepit judicium*, without making any allegiance against the verity of the executions ; and, therefore, she cannot, in the

No 139.

In a process for payment of furnishings made to a defender, he succumbing in the relevancy of the proof of a peremptory exception, was not thereafter allowed to deny the libel.

No 140.

A decree of certification *in foro* not reducible upon improbation of the execution.